

Title: Consultation on the Removal of Deposits and Securities under 144 (1) and 146 of the Road Traffic Act 1988 (in Great Britain) and equivalent articles of the Road Traffic Order 1981(in Northern Ireland). Date: 23/04/2018 DMA No: DfTDMA014 Lead department or agency: Department for Transport Other departments or agencies: None.		De Minimis Assessment (DMA)		
		Stage: Consultation		
		Source of intervention: European		
		Type of measure: Secondary		
Summary: Rationale and Options		Contact for enquiries: Geoff Finch@dft.gsi.gov.uk		
Total Net Present Value -£21.10m	Business Net Present Value -£21.10m		Net cost to business per year (EANDCB in 2014 prices) £2.2m	

Rationale for intervention and intended outcomes

There are currently two alternatives to compulsory third party motor insurance, vehicle owners can deposit £500,000 with the Senior Courts, or take out a security with a security giver who deposits £15,000 with the Senior courts. Only six businesses rely on these options.

For deposits the fund of last resort, the Motor Insurers Bureau (MIB), will not cover any shortfall in compensation if a depositor cannot pay compensation over the £500,000 deposited, so victims of vehicle accidents might not be fully compensated. For securities, the MIB (funded by insurance premium levies) would step in. The Department considers it unfair that insurance premium paying motorists pay if the security provider is a non-insurer because they do not contribute to the levy like insurers do. Also, we think the alternatives to compulsory insurance might not be fully compatible with EU law.

Government intervention is necessary to protect victims of vehicle accidents, ensure fairness and remove the risk of infraction by the EU Commission.

Describe the policy options considered

Option 1 – baseline: the status quo persists. The UK continues to allow the security and deposits scheme and the risk of breaching EU law continues.

Option 2 – Amend the Road Traffic Act in Great Britain (**Road Traffic Order 1981 in Northern Ireland**) to remove the deposits and securities provisions entirely, so conventional motor insurance would need to be purchased instead.

Option 2 is the only option to ensure victims of accidents are fully compensated and the MIB, and therefore premium paying motorists, will not have to pay if those that take out a security are unable to do so.

Rationale for DMA rating

The impacts of the regulatory changes are low. Even in the high cost scenario costs are estimated at less than £5m Equivalent Annual Net Direct Cost to Business.

Will the policy be reviewed? Yes		If applicable, set review date:		
Are these organisations in scope?	Micro No	Small No	Medium No	Large No

Senior Policy Sign-off:	✓	Date:	11/05/2018
Peer Review Sign-off:	✓	Date:	11/05/2018
Better Regulation Unit Sign-off:	✓	Date:	11/05/2018

Supporting evidence

1. Rationale for Intervention and Intended Objectives

The rationale for intervention

By removing these options we will ensure all victims are guaranteed full compensation and fairness for premium paying motorists. It would also remove the risk of infraction and fines by the EU Commission by ensuring that we are compliant with EU law.

Deposits – Inadequate protection for third parties

The depositor would have £500,000 deposited, but this may not be sufficient to meet all third party liabilities which arise from the use of the vehicles subject to the deposit. For example, in the case of a serious personal injury claim, liabilities may total many millions of pounds, so a victim might not be fully compensated. For a business, the deposit could be used to exempt a significant number of vehicles from the requirement to hold compulsory insurance.

If the depositor is unable to meet a third party claim, the MIB would not step in to compensate the victim as the vehicle would be exempt from the insurance requirement and therefore outside the scope of the Uninsured Drivers Agreement. This would reflect negatively on the Government if we have allowed drivers to drive without third party insurance if a victim (possibly with life changing injuries requiring long term care) suffers a shortfall in compensation. This contrasts with that of a driver who has third party insurance, where victim personal injury compensation is unlimited.

Securities - If the provider of a security is unable to cover liabilities for third party victims then compensation will fall to the Motor Insurers Bureau (MIB) which is funded by insurers and passed onto premium paying motorists.

Insurers are subject to authorisation and the regulation applicable to insurers (e.g. ongoing solvency requirements). They contribute to the Financial Services Compensation Scheme (FSCS) through a levy and in the unlikely event that an insurer becomes insolvent, the FSCS ensures claims are paid and any third party victims are fully compensated.

Security givers are not required to be insurers and those that aren't will not be subject to the same stringent regulatory oversight, resulting in an increased risk that they will be unable to pay out in the event of a claim concerning a vehicle in relation to which a security is given. The Motor Insurers Bureau (MIB) will, under the Uninsured Drivers' Agreement, satisfy claims where the security-giver is unable to pay out, and therefore the third party will not be disadvantaged. However the MIB is funded by insurers and therefore all premium paying motorists, but not all security givers, so we consider that it is inappropriate that it should bear the increased risks posed by security-givers.

Both schemes

We are concerned that the deposits and securities schemes might not be fully compliant with European Union (EU) law. For example, the Directive requires compulsory insurance in respect of third party liabilities of approximately £1.2 million property damage, and over £6 million personal injury. Neither a security of £15,000, nor a deposit of £500,000 provide any guarantee that such liabilities can be met.

2. Options Considered

Option 1, the baseline option is rejected as we want to remove the risks identified above. The only way to eliminate these is to remove the regimes entirely which is option 2. Those who have made a deposit or have taken out a security with a security giver will be required to purchase mandatory third party insurance.

3. Business Impact and DMA Classification

Option 1 (do nothing)

This is the current position so is the baseline against which option 2 is compared to. Therefore costs and benefits are nil.

Option 2 (remove the deposits and security schemes so those which have them will be required to take out insurance arrangements)

Half of companies which have a deposit or have taken out a security provided detailed responses on how this change would impact them. Due to the commercially sensitive nature of the data, impacts have been set out at an industry level.

It should be noted that although these companies did not require third party insurance they have all voluntarily taken out motor insurance cover for very high value claims, e.g. in excess of £250,000 in addition to their security or deposit.

Industry have identified two types of third party insurance policy conditions they may select if, as under option 2, the current schemes were removed:

i) Take out an insurance policy with a high excess

In this case, businesses would continue to pay claims themselves below an excess threshold (e.g. £250,000). Claims above £250,000 would be paid by the insurer but it is likely the insurer would require the business to take out collateral with the insurer. This is because if their policyholder goes bankrupt the insurer is legally responsible for meeting all the third party payments that fall below the excess. For higher value claims that are beyond the excess e.g. £250,000 then the insurer would pay.

ii) Take out an insurance policy with a low excess

In this case the excess will be much lower so the insurer would not be likely to require collateral as there is little risk that the business could not afford to pay low value claims.

In line with the responses from companies as to how the proposed changes would affect them, we have assumed in the assessment two thirds of companies' use route (i), and takes out an insurance policy with a high excess and so also collateral with an insurer, and the remaining third take route (ii), and take a policy with a lower per incident excess and therefore no collateral.

Benefits

The companies currently make a deposit of £500,000 or take out a security where the security provider deposits £15,000 with the Courts. This is deposited once and left there until if or when the deposit or security is withdrawn.

If these regimes were removed then industry would currently receive a benefit of an estimated £7k¹ per annum of interest, as currently they receive no interest on the funds when they are deposited.

Costs

Familiarisation

There is expected to be a one-time familiarisation cost to industry of around 2-4 weeks of one full time equivalent member of staff per company. This is time estimated for companies to find out about the legal change and how they will respond to this. These one-off costs are estimated to be around £8,000-£16,000, with a best estimate of around £12,000².

Admin

Industry have indicated that the annual average cost of administration for staff and resources is not expected to change.

Cost of retaining security or deposit for 3 years

Companies would need to put measures in place to ensure that victims of accidents are fully compensated once the deposit or security is withdrawn. We propose that the deposit or security be retained for three years, the standard timeframe for making a claim under the Limitation Act 1980, before being refunded to the depositor or those which have taken out a security. It might be a number of years before all claims are made, a rare example could be a baby injured today who would have a limitation period which will extend to their 21st birthday (18 years old (when they become an adult and are able to make a claim themselves) plus three years under the Limitation Act). A claim arising after so long would be unlikely, we consider three years satisfactory.

If the funds were held for three years, then this would cost industry an estimated £7k¹ per annum of interest, so £21k for three years. This is not an additional cost compared to option 1.

Expected change in costs for companies switching to route (i) and taking an insurance policy with an insurer but with a high excess, so they take out collateral with an insurer

Note: In this assessment, we have assumed two thirds of companies use route (i), and take out a type of security with an insurer covering claims above a high excess.

¹ £2.03m are held in securities and deposits in the scheme. Holding this money in a deposit scheme with a financial institution, could earn an annual interest rate of around 0.33%.

Source: Effective interest rate for businesses for sterling fixed rate, fixed maturity time deposits placed with UK monetary financial institutions (excl. central bank) <http://www.bankofengland.co.uk/boeapps/iadb/index.asp?first=yes&SectionRequired=1&HideNums=-1&ExtraInfo=true&Travel=NlxIRx>

$£2.03m \times 0.33\% = £6,699$.

² Companies need to familiarise themselves with the change.

DfT expert judgement has been used to estimate time costs, a sensitivity has been used to account for uncertainty. The time taken is expected to be between 2-4 weeks per company, with a best estimate of 3 weeks.

It is assumed that the staff undertaking the familiarisation would be of the finance officer grade and that their weekly rate of pay is £657 in line with ONS earnings data. Source: Table 14.7a

<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/occupation4digitsoc2010ashtable14>

These values have been uplifted by 30% to account for overheads in line with the Standard Cost Model:

<http://www.berr.gov.uk/files/file44503.pdf>

Companies would continue to pay and process claims below the excess threshold and continue to take out a motor insurance policy to provide for higher value claims above the excess.

Annual banking fees would be payable by companies on the excess security e.g. collateral or letter of credit. These are additional to the current system where there are no fees. These fees are estimated at around £250,000 per year³.

Expected change in costs for companies switching to route (ii) and taking out a third party insurance with a lower excess per incident.

Note: in this assessment, we have assumed one third of companies take route (ii), and take out a third party insurance with a smaller per incident excess. These companies would no longer pay and process claims below a current higher threshold. Instead they would incur the cost of third party insurance (beyond their current insurance for higher value claims) with a per incident excess. The additional cost of the new scheme is estimated at between £0.4m-£4m per year, with a best estimated cost of £2.2m per year⁴.

³ This has been estimated based on discussion with industry. Due to the commercially sensitive nature of the data, impacts have been set out at an industry level

⁴ This has been estimated based on discussion with industry. Due to the commercially sensitive nature of the data, impacts have been set out at an industry level. A sensitivity has been used to account for uncertainty of the cost of the new insurance policy and the excess.

Total monetised impacts

Table 1: Best estimate of impacts in £m over 10 years, 2017 prices

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Total
Reduced interest foregone	0	0	0	-0.007	-0.007	-0.007	-0.007	-0.007	-0.007	-0.007	
Familiarisation cost	0.012	0	0	0	0	0	0	0	0	0	
Route (i) banking fees	0.250	0.250	0.250	0.250	0.250	0.250	0.250	0.250	0.250	0.250	
Route (ii) Additional cost of new scheme*	2.204	2.204	2.204	2.204	2.204	2.204	2.204	2.204	2.204	2.204	
Total cost	2.466	2.454	2.454	2.448	2.448	2.448	2.448	2.448	2.448	2.448	24.509
NPV	2.466	2.371	2.291	2.208	2.133	2.061	1.991	1.924	1.859	1.796	21.100

***Note: this is the cost to companies of no longer paying and processing claims below a current higher threshold and the cost incurred under route (ii) of third party insurance and per incident excess (beyond their current insurance for higher value claims).**

Table 2: Low estimate of impacts in £m over 10 years, 2017 prices

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Total
Reduced interest foregone	0	0	0	-0.007	-0.007	-0.007	-0.007	-0.007	-0.007	-0.007	
Familiarisation cost	0.008	0	0	0	0	0	0	0	0	0	
Route (i) banking fees	0.250	0.250	0.250	0.250	0.250	0.250	0.250	0.250	0.250	0.250	
Route (ii) Additional cost of new scheme	0.384	0.384	0.384	0.384	0.384	0.384	0.384	0.384	0.384	0.384	
Total cost	0.642	0.634	0.634	0.627	0.627	0.627	0.627	0.627	0.627	0.627	6.298
NPV	0.642	0.612	0.592	0.566	0.546	0.528	0.510	0.493	0.476	0.460	5.425

Table 3: High estimate of impacts in £m over 10 years, 2017 prices

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Total
Reduced interest foregone	0	0	0	-0.007	-0.007	-0.007	-0.007	-0.007	-0.007	-0.007	
Familiarisation cost	0.016	0	0	0	0	0	0	0	0	0	
Route (i) banking fees	0.250	0.250	0.250	0.250	0.250	0.250	0.250	0.250	0.250	0.250	
Route (ii) Additional cost of new scheme	4.025	4.025	4.025	4.025	4.025	4.025	4.025	4.025	4.025	4.025	
Total cost	4.291	4.275	4.275	4.268	4.268	4.268	4.268	4.268	4.268	4.268	42.719
NPV	4.291	4.131	3.991	3.850	3.720	3.594	3.472	3.355	3.241	3.132	36.776

4. Risks and Assumptions

The assumptions have been based on a set of preliminary questions sent to the small number of current depositors and those which have taken out a security. There was a 50% response rate. There is uncertainty given the small number of businesses affected.

5. Wider Considerations

The proposal is to remove the current deposits and securities regimes which will mean that all businesses will be required to purchase full third party motor insurance. This will not result in wider social, environmental and economic impacts, distributional impacts and no disproportionate burdens on small businesses. The Accountant General of the Senior Courts who holds the monies deposited would not be negatively impacted,

6. Post-Implementation Review Plan

1. Review status: Please classify with an 'x' and provide any explanations below.											
<input type="checkbox"/>	Sunset clause	<input type="checkbox"/>	Other review clause	<input type="checkbox"/>	Political commitment	<input type="checkbox"/>	Other reason	<input checked="" type="checkbox"/>	x	No plan to review	
Rationale for not conducting a PIR:											
The net impacts on business as a result of these legislative changes are less than £5 million. There will be no Post Implementation Review											