



Law Society
of Scotland

Consultation Response

UK Government: Department of Transport

Consultation on the removal of Deposits and
Securities as alternatives to conventional insurance

2 October 2018



Introduction

The Law Society of Scotland is the professional body for over 11,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

Our Criminal Law Committee welcomes the opportunity to consider and respond to the Department of Transport's *Consultation on the removal of Deposits and Securities as alternatives to conventional insurance*¹. The committee has the following comments to put forward for consideration.

General

The consultation refers to the proposal to remove the two alternatives to conventional motor insurance provided by the Road Traffic Act 1988 (1988 Act).² These refer to deposits and securities respectively provided for under section 144(1) and section 146 of the 1988 Act.

Our members of the Criminal Law Committee represent both prosecution and defence solicitors in Scotland who handle those charged with road traffic offences including contraventions of section 143 of the 1988 Act (driving without road traffic insurance). Such offences may become relevant if the deposit and securities schemes outlined in this consultation are removed. Any organisations who have availed themselves of either of the alternatives to conventional motor insurance will be required to arrange such motor insurance. Otherwise they would potentially be liable for prosecution and guilty of an offence.

We would respond to the questions as follows:

¹ <https://www.gov.uk/government/consultations/motor-insurance-alternatives-removal-of-deposit-and-security-options>

² The consultation refers to the Road Traffic Order which only applies to Northern Ireland. Our comments in this response are therefore restricted to the 1988 Act.

Question 1: If you disagree with our proposal to remove the deposit and security alternatives to compulsory third-party motor insurance, then how else do you propose we reform these regimes to ensure that they are fair, protect victims and are compliant with the law?

We support the proposals.

We do understand the reasoning behind the proposed changes which appear to have been in place for over eighty years since 1930. Certainly, there is cause for review of the legislation of that age to ascertain if it is still fit for purpose.

The consultation refers to it 'being inappropriate that premium paying motorists (who ultimately bear the costs of insurers) should bear the potential risk posed by a security-giver who has made no contribution to MIB [Motor Insurers Bureau].' That certainly is true, but it would be helpful for that to have been demonstrated evidentially. It has not been possible to ascertain how many companies or organisations would be affected by these changes. This would have been useful, especially, where there is a suggestion that there would not be funds or sufficient funds to make any appropriate pay-out by way of compensation.

We agree that a £500,000 deposit might not now be sufficient to meet all third-party liabilities. A serious personal injury claim might well be anticipated to be grossly in excess of that sum. There is a need to avoid shortfall in meeting any claims. If an organisation or person seeks to use the deposit or security route, they should not escape any shortfall which seems to be a problem at present. The law requires fairness and equality.

It is potentially inequitable for those not availing themselves of this statutory alternative provision and maintaining conventional insurance to pay higher insurance premiums. In the case of an accident, that would meet any settlement claim in contrast to a shortfall that may arise under the alternative scheme.

There is an argument that there would still be an action competent for any shortfall against the company or individual who may have undertaken their insurance arrangements by this method. However, if the individual has no money or the company is in administration, this would be worthless. One of the main purposes in respect of the obligation for maintaining conventional insurance is to ensure that there are compensation provisions for those affected in accidents. If that cannot be achieved fully or effectively, that merits this change coming into force.

We also note the requirements for compliance with European Union (EU) law. As noted, the requirements under EU law for property damage and personal injury do seem much more realistic in relation to today's prices so consideration of alignment does seem appropriate.

Question 2: What would the impact be on your business if we removed the options for a deposit under section 144(1) or a security under s 146 of the RTA?

This question is not relevant to us.

Question 3: What time period would you consider is appropriate between confirmation that the change will go ahead and removal of the option and why?

Though the consultation does not state how the change would come into effect, we assume that it must be by way of amendment to the 1988 Act by means of primary legislation. That will take time to achieve in any event and is subject to parliamentary debate and scrutiny.

Thereafter, provided the relevant legislation is passed, it needs to be commenced.

Any change of this nature should of course be subject to clear information provided by the Government through the Department of Transport to alert the relevant organisations for the need to ensure that their insurance arrangements are put in place before the relevant date. Ignorance of the law is no excuse.

We wonder in practical terms how many companies and organisations in the UK actually do avail themselves of the statutory alternative provisions. If there are not many and their identities are known, there may be more direct means of communicating with them about the change coming into force.

There will be practical arrangements that companies require to make to comply with this change. This has been estimated at around £12,000 which is an estimate of the administrative costs.³

Question 4: If the deposits and securities regimes were removed and deposits refunded then how would you propose that victims receive appropriate compensation for liabilities incurred at the time that you relied on a deposit or gave out securities in place of insurance? Would you support the deposit made by deposits and security holders' givers to be retained for three years after the regimes have ended? Alternatively do you have another suggestion? If so, please explain?

As recognised by the consultation, if this change goes ahead, there is a need for transitional arrangements to be made. What is proposed seems perfectly practical in that the deposit is to be retained for a period of three years from the commencement of the relevant provisions.

³ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/732076/dma-consultation-on-securities-and-deposits.pdf

Question 5: Do you agree with our analysis of the issue presented in consultation documents? If not, please explain why not?

We have nothing further to add.

Gillian Mawdsley

Policy Executive

Law Society of Scotland

Atria One

44 Morrison Street

Edinburgh EH3 8EX

DD:0131 476 8206

gillianmawdsley@lawscot.org.uk