

Subsidiary Legislation made under s. 118.

**MOTOR VEHICLES INSURANCE (CIVIL LIABILITY
FOR ACCIDENT IN ANOTHER COUNTRY)
REGULATIONS, 2003**

(LN. 2003/008)

Commencement **30.1.2003**

Amending enactments	Relevant current provisions	Commencement date
LN. 2009/034	rr. 2, 4(2)(b), 7 & 7A	4.6.2009

EU Legislation/International Agreements involved:

Directive 73/239/EEC
Directive 88/357/EEC
Directive 2000/26/EC
Directive 2005/14/EC

ARRANGEMENT OF REGULATIONS

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In exercise of the powers conferred on it by section 118 of the Insurance Companies Act 1987, and of all other enabling powers, and for the purposes of transposing in part Directive 2000/26/EC on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles and amending Council Directives 73/239/EEC and 88/357/EEC (Fourth Motor Insurance Directive) into the law of Gibraltar, the Government has made the following Regulations—

Title.

1. These Regulations may be cited as the Motor Vehicles Insurance (Civil Liability for Accident in Another Country) Regulations, 2003.

Interpretation.

2. In these Regulations, unless the context otherwise requires—

“Directive” means the Fourth Motor Insurance Directive;

“insurance undertaking” means a motor vehicle liability insurer;

“motor vehicle” shall have the same meaning as in section 2(1) of the Insurance (Motor Vehicles) (Third Party Risk) Act, 1986.

Right of legal action.

3.(1) Where any resident of another EEA State, not being a resident in Gibraltar, suffers any loss or injury resulting from an accident occurred in Gibraltar which is caused by the use of a vehicle insured and based in any EEA State, the injured party shall be entitled to compensation from the insurance undertaking.

(2) Subregulation (1) shall apply to a person resident in any EEA State and entitled to compensation in respect of any loss or injury resulting from accidents occurring in third countries, without prejudice to any law for the time being in force in that third country on civil liability, whose national insurance bureau have joined the green card system, whenever such accidents are caused by the use of vehicle insured and normally based in any EEA State.

(3) Any person entitled to compensation under subregulation (1) or (2) may bring legal proceedings for compensation against the insurance undertaking who covers the driver responsible for the accident against any civil liability.

Information centres.

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4.(1) For the purposes of allowing the injured party to seek compensation for an accident in the cases referred to in Article 1 of the Directive, the Government shall establish or approve an information centre for—

- (a) keeping a register containing the information specified in subregulation (2);
- (b) coordinating the compilation and dissemination of such information; and
- (c) assisting entitled persons to be apprised of the information mentioned in subregulation (2).

(2) An information centre established or approved under subregulation (1) shall maintain the following information—

- (a) the registration number of motor vehicles based in Gibraltar;
- (b) the numbers of the insurance policies covering the use of vehicles which cover the risks and civil liability arising out of the use of motor vehicles operating on the land, other than carrier's liability, and where the period of validity of the policy has expired, the date of termination of the insurance cover;
- (c) insurance undertakings covering the use of vehicles for the risks and civil liability arising out of the use of motor vehicles operating on the land, other than carrier's liability, and claims representatives appointed by such insurance undertakings in accordance with section 29 of the Principal Act whose names shall be notified to the information centre in accordance with subregulation (4);
- (d) the list of vehicles which, in each EEA State, benefit from the derogation from the requirement for civil liability insurance cover in accordance with Article 4(a) and (b) of Directive 72/166/EEC; and
- (e) regarding the vehicles provided for in paragraph (d) above—
 - (i) the name of the authority or the body designated in accordance with the second subparagraph of Article 4(a) of Directive 72/166/EEC as responsible for compensating injured parties in the cases where the procedure provided for in the first indent of Article 2(2) of Directive 72/166/EEC is not applicable, if the vehicle

benefits from the derogation provided for in Article 4(a) of Directive 72/166/EEC; and

- (ii) the name of the body covering the vehicle in the EEA State where it is normally based if the vehicle benefits from the derogation provided for in Article 4(b) of Directive 72/166/EEC.

(3) The information mentioned in paragraphs (2)(a) to (c) above must be preserved for a period of seven years after the termination of the registration of the vehicle or the termination of the insurance contract.

(4) Insurance undertakings referred to in subregulation (2)(c) above shall notify to the information centres of all EEA States the name and address of the claims representative which they have appointed in accordance with section 29 in each of the EEA States.

(5) An information centre established or approved under subregulation (1) shall cooperate with other information centres established for the purposes of the Directive.

Period of limitation for information.

5. An injured party entitled for compensation by virtue of Article 1 of the Directive, is entitled, for a period of seven years after the accident to obtain without delay from the information centre of the EEA State where he resides, the EEA State where the vehicle is normally based or the EEA State where the accident occurred, the following information—

- (a) the name and address of the insurance undertaking;
- (b) the number of the insurance policy; and
- (c) the name and address of the insurance undertaking's claims representative in the EEA State of residence of the injured party.

Information to be provided by the information centres to the injured party.

6.(1) The information centre shall provide the injured party with the name and address of the owner or usual driver or the registered keeper of the vehicle if the injured party has a legitimate interest in obtaining this information.

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(2) For the purposes of subregulation (1), the information centre must address itself in particular–

- (a) to the insurance undertaking; or
- (b) to the vehicle registration agency.

(3) Where the vehicle benefits from the derogation provided for in Article 4(a) of Directive 72/166/EEC, the information centre must inform the injured party of the name of the authority or body designated in accordance with the second subparagraph of Article 4(a) of that Directive as responsible for compensating injured parties in cases where the procedure provided for in the first indent of Article 2(2) of that Directive is not applicable.

(4) Where the vehicle benefits from the derogation provided for in Article 4(b) of Directive 72/166/EEC, the information centre must inform the injured party of the name of the body covering the vehicle in the country where it is normally based.

Processing of data.

7. The processing of personal data, resulting from the functions performed by virtue of regulations 4 to 6, must be carried out in accordance with the measures taken pursuant to the Data Protection Act.

Provision of basic data.

7A.(1) The Government must take all appropriate measures to facilitate the availability in due time to the victims, their insurers or their legal representatives of the basic data necessary for the settlement of claims.

(2) This basic data shall, where appropriate, be made available in electronic form in a central depositary, and be accessible by parties involved at their express request.

Compensation bodies.

8.(1) The Government must establish or approve a compensation body responsible for providing compensation to injured parties in the cases referred to in Article 1 of the Directive.

(2) An injured party may present a claim to the compensation body in his EEA State of residence–

- (a) if, within three months of the date when the injured party presented his claim for compensation to the insurance

undertaking of the vehicle the use of which caused the accident or to its claims representative, the insurance undertaking or its claims representative has not provided a reasoned reply under section 30 to the points made in the claim; or

- (b) if the insurance undertaking has failed to appoint a claims representative in the EEA State of residence of the injured party in accordance with section 29(1).

(3) In a case referred to in subregulation (2)(b) above, the injured party may not present a claim to the compensation body if he has—

- (a) presented a claim for compensation directly to the insurance undertaking of the vehicle the use of which caused the accident; and
- (b) received a reasoned reply under section 30 within three months of presenting the claim.

(4) An injured party may not present a claim to the compensation body under subregulation (2) if he has taken legal action directly against the insurance undertaking.

(5) The compensation body must take action within two months of the date when the injured party presents a claim for compensation to it but shall terminate its action if the insurance undertaking, or its claims representative, subsequently makes a reasoned reply to the claim.

(6) Where the compensation body receives a claim from an injured party under subregulation (2), it shall immediately inform—

- (a) the insurance undertaking of the vehicle the use of which caused the accident or the claims representative;
- (b) the compensation body in the EEA State of the insurance undertaking's establishment which issued the policy; and
- (c) if known, the person who caused the accident,

that it has received such a claim and that it will respond to that claim within two months of the presentation of that claim.

Right of subrogation.

9.(1) Where the compensation body has paid any compensation to the injured party, the compensation body in the EEA State where the injured

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party is resident, shall have a right to recover the amount paid from the compensation body in the EEA State where the insurer's establishment which issued the relevant policy is located and that compensation body shall, in turn, be subrogated to the injured party in his rights against the person who caused the accident or his insurance undertaking in so far as the compensation body in the EEA State of residence of the injured party has provided compensation for the loss or injury suffered.

(2) The arrangements for recovery of compensation paid out under subregulation (1) must be in accordance with an agreement to be reached between the compensation bodies in each EEA State.

(3) This regulation shall take effect—

- (a) after an agreement has been concluded between the compensation bodies established or approved by the EEA States relating to their functions and obligations and the procedures for reimbursement; and
- (b) from the date fixed by the Commission upon its having ascertained in close cooperation with the EEA States that such an agreement has been concluded.

Non-identification of the Vehicle or the insurance undertaking.

10.(1) Where it is impossible to identify the vehicle or if, within two months following the accident, it is impossible to identify the insurance undertaking, the injured party may apply for compensation from the compensation body in the EEA State where he resides.

(2) In a case referred to in subregulation (1) above, the compensation shall be provided in accordance with the provisions of Article 1 of Directive 84/5/EEC and the compensation body shall then have a claim under regulation 9(1) above—

- (a) against the guarantee fund provided for in Article 1(4) of Directive 84/5/EEC in the EEA State where the vehicle is normally based if the insurance undertaking cannot be identified;
- (b) against the guarantee fund in the EEA State in which the accident took place in the case of an unidentified vehicle; and
- (c) against the guarantee fund of the EEA State in which the accident took place in the case of third-country vehicles.

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(3) This regulation shall also apply to accidents caused by third-country vehicles covered by Articles 6 and 7 of Directive 72/166/EEC.