

# Insurance (Motor Vehicles) (Third Party Risks) Act, 1986

## Principal Act

<b>Act. No. 1986-14</b>	<i>Commencement</i>	17.7.1986
	<i>Assent</i>	17.7.1986

Amending enactments	Relevant current provisions	Commencement date
Act. 1988-27	ss.2(2)-(3), 4(1)-(2), 13(1), 13(1A)-(1B), 13(2), 13(4A), 16(a), 18(1)(i)	31.12.1988
1997-07	ss. 2(1), 4(1)(a)-(b), (1A), (2)-(3), 8, 9(1), 15(1)-(2),	1.6.1997
1998-50	s. 4(1B)	24.12.1998
2004-28	s. 2(1)	1.5.2004
2007-17	ss. 2(1), 12(1), 21(1), 24(1)	14.6.2007
2009-31	ss. 2(2), 3(5), (7), 4(2A), 7(4), 12(1)(a), (1A), 13(1AA), (1AAZ), 13A, 18(1)(aa)	14.10.2010 <sup>1</sup>
LN. 2018/230	ss. 4(2)(b), (2A), 13(1A), (1AAZ)	25.10.2018
Act. 2018-22	s. 2(1)	15.11.2018
LN. 2020/508	ss. 3(7), 4(1)(b), (1A)(b), (1B), 12(1)(b), (7), (c)	1.1.2021
Act.2023-03	s. 2(1)	26.1.2023
Act.2023-24	s. 8A	27.7.2023

## Transposing:

Directive 72/166/EEC

Directive 84/5/EEC

Directive 90/232/EEC

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<sup>1</sup> Commencement notice LN. 2010/154

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AN ACT TO MAKE PROVISIONS AGAINST THIRD PARTY RISKS ARISING OUT OF THE USE OF MOTOR VEHICLES.

## **Short title.**

1. This Act may be cited as the Insurance (Motor Vehicles) (Third Party Risks) Act, 1986.

## **Interpretation.**

2.(1) In this Act unless the context otherwise requires

“approved motor vehicle insurer” means an insurer who—

- (a) is authorised to carry on motor vehicle insurance business under the Insurance Companies Act; and
- (b) is a member of the Motor Insurers’ Bureau of the United Kingdom; and
- (c) is designated as an approved motor vehicle insurer for the purposes of this Act;

“driver” where a separate person acts as steersman of a motor vehicle, includes that person as well as any other person engaged in the driving of the vehicle, and the word “drive” shall be construed accordingly;

“highway” includes every place over which the public has a right of way, or to which the public or any part of the public are granted access, and every place where the motor traffic thereon is regulated by a police officer;

“member state” means a state which is a member of the European Economic Community;

“motor vehicle” means any vehicle propelled by mechanical power whether constructed for use on roads or otherwise and any trailer whether or not coupled thereto; but shall exclude a personal light electric transporter, any mechanically propelled vehicle intended for use on rails or specially prepared ways or excluded under section 2A of the Traffic Act 2005;

“owner”, in relation to a vehicle which is the subject of a hiring agreement or a hire purchase agreement or a bill of sale, includes a person in possession of the vehicle under that agreement or in apparent possession of the vehicle under that bill of sale;

“personal light electric transporter” has the meaning given in the Personal Light Electric Transporters Act 2023;

“policy of insurance” includes a cover note;

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“relevant foreign state” is a reference to Norway, Switzerland or to any other country which the Government may by notice in the Gazette designate;

“road” means any highway and any other road to which the public has access, and includes bridges over which a road passes and includes any road belonging to the Crown to which the public has or is permitted access;

(2) For the purposes of sections 4 and 10 of this Act the territory in which a vehicle is normally based is–

- (a) the territory of the State of which the vehicle bears a registration plate irrespective of whether the plate is permanent or temporary; or
- (b) in cases where no registration is required for the type of vehicle but the vehicle bears an insurance plate or distinguishing sign analogous to a registration plate, the territory of the State in which the insurance plate or the sign is issued; or
- (c) in cases where neither registration plate nor insurance plate nor distinguishing sign is required for the type of vehicle, the territory of the State in which the keeper of the vehicle is permanently resident; or
- (d) in cases where the vehicle does not bear any registration plate or bears a registration plate which does not correspond or no longer corresponds to the vehicle and has been involved in an accident, the territory of the State in which the accident took place, for the purpose of settling the claim under an agreement between national insurers’ bureaux or under Article 1.4 of the Second Council Directive 84/5/EEC.

(3) In sections 4 and 13 of this Act any reference to an accident includes a reference to two or more causally related accidents.

### **Motor vehicles to be insured against third party risks.**

3.(1) Subject to the provisions of this Act it shall not be lawful for a person to use, or to cause or permit any other person to use, a motor vehicle on a road unless there is in force in relation to the use of the vehicle by that person or that other person, as the case may be, such a policy of insurance in respect of third party risks as complies with the requirements of this Act.

(2) A person who acts in contravention of subsection (1) of this section is guilty of an offence and is liable, on summary conviction, to a fine not exceeding £250 or to imprisonment for a term not exceeding six months, or to both such fine and such imprisonment and may be disqualified from holding or obtaining a certificate of competency for such period from the date of the conviction as the court thinks fit.

(3) A person charged with using a motor vehicle in contravention of subsection (1) of this section shall not be convicted if he proves that the vehicle did not belong to him and was not in his possession under a contract of hiring or of loan, that he was using the vehicle in the course of his employment and that he neither knew nor had reason to believe that there was not in force in relation to the vehicle a policy of insurance as is mentioned in subsection (1) above.

(4) Subsection (1) of this section shall not apply–

- (a) to a motor vehicle which is owned by the Gibraltar Government or the Ministry of Defence whilst such a vehicle is being used for the purposes of the Gibraltar Government or the Ministry of Defence respectively; or
- (b) to a motor vehicle at a time when it is being driven for police purposes or under the direction of a police officer; or
- (c) to any other vehicle or class of vehicle exempted by rules made under this Act.

(5) No person may use a vehicle to which subsection (4) of this section applies in Gibraltar or in a territory of a member state unless there is in force a valid policy of insurance which has been issued by an approved motor vehicle insurer and which insures the use of the vehicle in respect of any liability which may be incurred by him in respect of the use of the vehicle in Gibraltar or in the territory of a member state, in the latter case in accordance with the law on compulsory insurance against civil liability in respect of the use of vehicles of the state where the liability may be incurred.

(6) A person who contravenes the provisions of subsection (5) is guilty of an offence.

**Requirements in respect of insurance policies.**

4.(1) In order to comply with the requirements of section 3 of this Act the policy of insurance must be a policy which–

- (a) in the case of a vehicle which is registered in Gibraltar under the provisions of the Traffic Act or which is not required to be so registered but the keeper of which is permanently resident in Gibraltar and in every case where a policy of insurance is issued in Gibraltar for the purposes of this Act–
  - (i) is issued by an approved motor vehicle insurer; and
  - (ii) insures such person, or classes of persons as may be referred to in the policy in respect of the liabilities mentioned in subsection (1A).

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- (b) in the case of a vehicle which is normally based in a territory of a member state or of a relevant foreign state insures such person, persons or classes of such persons as may be specified in the policy in respect of any liability which may be incurred by him or them in respect of the death of or bodily injury to any person or damage to property caused by, or arising out of, the use of the vehicle on a road in Gibraltar if –
  - (i) according to the law of that territory him or them would be required to be insured in respect of a civil liability which would arise under that law as a result of that event if the place where the vehicle was used when the event occurred was in that territory, and
  - (ii) the cover required by that law would be higher than that required by subparagraph (a); and
- (c) in the case of a vehicle not mentioned in paragraph (a) or paragraph (b), insures the use of the vehicle in accordance with paragraph (a) (ii) of this subsection.

(1A) The insurer shall insure such person or classes of person in respect of any liability which was to be incurred by him or them in respect of –

- (a) any civil liability which may be incurred by him or them in respect of the death of or bodily injury to any person or damage to property by, or arising out of, the use of the vehicle in Gibraltar; and
- (b) in the case of a vehicle normally based in Gibraltar any civil liability which may be incurred by him or them in respect of the use of the vehicle in a territory of each of the member States according to –
  - (i) the law on compulsory insurance against civil liability in respect of the use of vehicles in the State in whose territory the event giving rise to the liability occurred, or
  - (ii) if it would give higher cover, the law which would be applicable under this Act if the place where the vehicle was used when that event occurred were in Gibraltar;

(1B) *Deleted.*

(2) The policy shall not, by virtue of subsection (1), be required, in respect of the use of the vehicle on a road in Gibraltar –

- (a) to cover liability other than passenger liability in respect of the death arising out of and in the course of his employment, of a person in the employment of a person

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insured by the policy or of bodily injury or damage to property sustained by such a person arising out of and in the course of his employment; or

- (b) to provide insurance for more than £1,200,000 in respect of all such liabilities as may be incurred in respect of damage to property caused by, or arising out of any one accident involving the vehicle; or
- (c) to cover liability in respect of damage to the vehicle; or
- (d) to cover liability in respect of damage to goods carried for hire or reward in or on the vehicle or in or on any trailer (whether or not coupled) drawn by the vehicle; or
- (e) to cover any liability of a person in respect of damage to property in his custody or under his control; or
- (f) to cover any contractual liability.

(2A) *Deleted.*

(3) The reference in subsection (2)(a) above to passenger liability is a reference to the liability of a person insured by the policy in respect of persons –

- (a) carried in or upon a vehicle; or
- (b) entering or getting on to, or alighting from, a vehicle.

(4) All contracts of insurance, insofar as they provide for compulsory insurance against third party liability, shall be on the basis of a single premium payable for the term of the contract and shall cover the entire territory of the Community including for any period in which the vehicle remains in part of Community territory other than Gibraltar during the term of the contract.

### **Issue, delivery and surrender of certificates of insurance.**

5.(1) A policy of insurance shall be of no effect for the purposes of this Act unless and until there is delivered by the insurer to the person by whom the policy is effected a certificate of insurance in the prescribed form and containing such particulars of any conditions subject to which the policy is issued and of any other matters as may be prescribed.

(2) Where a certificate has been delivered under this section and the policy to which it relates is cancelled by mutual consent or by virtue of any provisions in the policy, the person to whom the certificate was delivered shall, within 7 days from the taking effect of the cancellation, surrender the certificate to the insurer, or if the certificate has been lost or destroyed, make a statutory declaration to that effect and deliver it forthwith to the insurer.

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(3) Where a certificate has been delivered under this section and the policy to which it relates is suspended or ceases to have effect otherwise than by the effluxion of time, in circumstances in which the provisions of subsection (2) of this section do not apply, the person to whom the certificate was delivered shall, within 7 days from the suspension or cessation of the policy, surrender the certificate to the insurer and the insurer shall not issue a new policy or certificate in respect of the motor vehicle or vehicles to which the said first mentioned policy relates unless and until the certificates issued in respect of that policy have been returned to the insurer or the insurer is satisfied that such certificates have been lost or destroyed and a statutory declaration to that effect has been delivered to him.

(4) Any person who fails to comply with the requirements of this section shall be guilty of an offence.

### **Issue of fresh certificates.**

6.(1) Where an insurer by whom a certificate of insurance has been issued is satisfied that the certificate has become defaced or has been lost or destroyed, the insurer shall, if requested to do so by the person to whom the certificate was issued, issue to him a fresh certificate.

(2) In the case of a defaced certificate the insurer shall not issue a fresh certificate unless the defaced certificate is returned to the insurer.

(3) An insurer who fails to comply with the requirements of this section shall be guilty of an offence.

### **Notification of ineffective policies.**

7.(1) Where a policy ceases to be effective otherwise than with the consent of the person to whom it was issued, or by the effluxion of time, or by reason of that person's death, the insurer shall forthwith notify the fact in writing to the Licensing Authority for the purposes of the Traffic Act, stating the date on which the policy ceased to be effective and shall deliver a copy of such notification to the person to whom the policy has been issued:

Provided that notification need not be made if the certificate of insurance had been surrendered to the insurer on or before the date on which the policy ceased to be effective.

(2) Any insurer who fails to comply with the requirements of this section is guilty of an offence and is liable, on summary conviction, to a fine not exceeding £50.

### **Power of police officers to obtain names and addresses of drivers and others, and to require production of evidence of insurance.**

8.(1) Any of the following persons –



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- (a) a person driving a motor vehicle (other than an invalid carriage) on a road, or
- (b) a person whom a police officer has reasonable cause to believe to have been the driver of a motor vehicle (other than an invalid carriage) at a time when an accident occurred owing to its presence on a road, or
- (c) a person whom a police officer has reasonable cause to believe to have committed an offence in relation to the use on a road of a motor vehicle (other than an invalid carriage),

shall on being so required by a police officer, give his name and address and the name and address of the owner of the vehicle and produce the relevant certificate of insurance for examination.

(2) Subject to subsection (3) below, a person who fails to comply with subsection (1) above shall be guilty of an offence.

(3) A person shall not be convicted of an offence under subsection (2) above by reason only of failure to produce any certificate or other evidence to a police officer if in proceedings against him for the offence he shows that –

- (a) within five days after the date on which the production of the certificate or other evidence was required it was produced at a police station that was specified by him, or
- (b) it was produced there as soon as was reasonably practicable, or
- (c) it was not reasonably practicable for it to be produced there before the day on which the proceedings were commenced.

(4) In this section “owner”, in relation to a vehicle which is the subject of a hiring agreement, includes each party to the agreement.

### **Retained EU law relating to compulsory insurance.**

8A.(1) To the extent that Article 3 of the 2009 Motor Insurance Directive or any English common law decision in relation to Article 3 of the 2009 Motor Insurance Directive (as they had effect at any time) is relevant to any question as to the interpretation or effect of any provision of this or any other Act, references in that Article to liability in respect of the use of vehicles are to be read as not including liability in respect of the use in Gibraltar of vehicles-

- (a) other than motor vehicles, or
- (b) otherwise than on a road or other public place.

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(2) Relevant section 7 rights cease to be recognised and available insofar as they relate to compensation in connection with the use in Gibraltar of vehicles—

- (a) other than motor vehicles, or
- (b) otherwise than on a road or other public place.

(3) Accordingly, to the extent that it is inconsistent with subsection (1) or (2), retained case law ceases to have effect.

(4) In this section-

“the 2009 Motor Insurance Directive” means Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability;

“relevant section 7 rights” means section 7 rights which—

- (a) are recognised and available in the law of Gibraltar, and
- (b) derive from the obligation imposed on Gibraltar by Article 10 of the 2009 Motor Insurance Directive as it had effect immediately before IP completion day (which relates to compensation in connection with the use of vehicles in cases where drivers are uninsured or untraced);

“retained case law” has the same meaning as in the European Union (Withdrawal) Act 2019;

“section 7 rights” means rights, powers, liabilities, obligations, restrictions, remedies and procedures which continue to be recognised and available in domestic law by virtue of section 7 of the European Union (Withdrawal) Act 2019 (saving for rights etc. under section 3(1) of the ECA), including those rights, powers, liabilities, obligations, restrictions, remedies and procedures-

- (a) as modified by domestic law from time to time, and
- (b) as they apply to the Crown in right of Gibraltar.

(5) Nothing in this section applies in relation to the use of a vehicle before the day on which the Insurance (Motor Vehicles) (Third Party Risks) (Amendment) Act 2023 came into force.

### **Duty of driver in case of accident involving injury to another.**

9.(1) If in a case where owing to the presence on a road of a motor vehicle an accident occurs involving personal injury to another person or damage is caused to a vehicle other than that

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motor vehicle or trailer drawn by it, or to an animal other than an animal in or on that motor vehicle or trailer drawn by it, or to any other property constructed on, fixed to, growing in or otherwise forming part of the land on which the road in question is situated or land adjacent to such land the driver of the vehicle does not at the time produce to a police officer or some person who, having reasonable grounds for so doing, has required the production of the relevant certificate of insurance, the driver shall, as soon as possible, and in any case within 24 hours of the occurrence of the accident, report the accident at a police station and thereupon produce the relevant certificate and, if he fails so to do he is, subject to subsection (2), guilty of an offence.

(2) A person shall not be convicted of an offence under subsection (1) of this section by reason only of a failure to produce the relevant certificate if, within 5 days after the occurrence of the accident, he produces the same in person at such police station as may be specified by him at the time when the accident was reported.

### **Vehicles normally based in member states or relevant foreign states.**

10. In the case of a vehicle normally based in a territory of a member state or of a relevant foreign state, the evidence to be produced for the purposes of sections 8 and 9 may, as an alternative to a certificate of insurance, be a document issued by the insurer of the vehicle indicating the name of the insurer, the number or other identifying particulars of the insurance policy and the period of the insurance cover.

### **Duty of owner of motor vehicle.**

11. It shall be the duty of the owner of a motor vehicle to give such information as he may be required by or on behalf of the Commissioner of Police to give for the purpose of determining whether the vehicle was or was not being driven in contravention of section 3 on any occasion when the driver was required under sections 8 and 9 to produce the relevant certificate of insurance, and any person who fails to comply with the requirements of this section is guilty of an offence.

### **Production of insurance on entering Gibraltar.**

12.(1) Any person appointed by the Government by notice in the Gazette (hereinafter referred to as an appointed person) may require a person having custody of any vehicle—

- (a) which is normally based in a territory of a state (other than a relevant foreign state) which is not a member state; or
- (b) which is exempt under section 3(4),

when entering Gibraltar, to produce evidence that any loss or injury which may be caused by such a vehicle is covered throughout Gibraltar, in accordance with the requirements of the law

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on compulsory insurance as set out in this Act on compulsory insurance against civil liability in respect of the use of vehicles.

(1A) The appointed person may seek the evidence referred to in subsection (1) from persons having custody of a vehicle which is normally based in the territory of a member state and in respect of vehicles normally based in the territory of a state which is not a member state entering Gibraltar directly from Spain, but such checks may be carried out only if they are non-systematic and provided that they are not discriminatory and are carried out as part of a control which is not aimed exclusively at insurance verification.

(2) An appointed person may, if no such evidence is produced or if he is not satisfied by such evidence, prohibit the use of the vehicle in Gibraltar.

(3) Where an appointed person prohibits the use of a vehicle under this section, he may also direct the driver to remove the vehicle to such place and subject to such conditions as are specified in the direction; and the prohibition shall not apply to the removal of the vehicle in accordance with the direction.

(4) A prohibition under subsection (2) of this section may be removed by an appointed person if he is satisfied that appropriate action has taken to remove or remedy the circumstances in consequence of which the prohibition was imposed.

(5) Where a police officer has reasonable cause to suspect the driver of a vehicle of having committed an offence under this section, the police officer may detain the vehicle, and for that purpose may give a direction specifying an appropriate person and direction the vehicle to be removed by that person to such place and subject to such conditions as are specified in the direction; and the prohibition shall not apply to the removal of the vehicle in accordance with that direction.

(6) Where under subsection (5) of this section a police officer—

- (a) detains a motor vehicle drawing a trailer, or
- (b) detains a trailer drawn by a motor vehicle,

then, for the purpose of securing the removal of the trailer, he may also (in a case falling within subparagraph (a) above) detain the trailer or (in a case falling within subparagraph (b) above) detain the motor vehicle; and a direction under subsection (5) of this section may require both the motor vehicle and the trailer to be removed to the place specified in the direction.

(7) A vehicle which, in accordance with a direction given under subsection (5) of this section, is removed to a place specified in the direction, shall be detained in that place, or in any other place to which it is removed in accordance with a further direction given under that subsection, until a police officer authorises the vehicle to be released on being satisfied—

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- (a) that the prohibition (if any) imposed in respect of the vehicle under subsection (2) of this section has been removed, or that no such prohibition was imposed, or
- (b) that appropriate arrangements have been made for removing or remedying the circumstances in consequence of which any such prohibition was imposed, or
- (c) that the vehicle will be taken forthwith to a place from which it will be taken out of Gibraltar to a place not in Northern Ireland or the European territory of a member state and not in the territory of a relevant foreign state.

(8) In this section “appropriate person”–

- (a) in relation to a direction to remove a motor vehicle, other than a motor vehicle drawing a trailer, means a person licensed to drive vehicles of the class to which the vehicle belongs, and
- (b) in relation to a direction to remove a trailer, or to remove motor vehicle drawing a trailer, means a person licensed to drive vehicles of a class which, when the direction is complied with, will include the motor vehicle drawing the trailer in accordance with that direction.

(9) A person who–

- (a) uses a vehicle or causes or permits a vehicle to be used in contravention of a prohibition imposed under subsection (2); or
- (b) refuses, neglects or otherwise fails to comply in a reasonable time with any direction given under this section,

is guilty of an offence and is liable, on summary conviction, to a fine not exceeding £50.

(10) Any person who–

- (a) drives a vehicle in accordance with a direction given by a police officer under subsection (5) of this section, or
- (b) is in charge of a place at which a vehicle is detained under subsection (3) or (5) of this section,

shall not be liable for any damage to, or loss in respect of, the vehicle, its trailer (if any) or load unless it is shown that he did not take reasonable care of the vehicle, its trailer (if any) or load while driving the vehicle or, as the case may be, he did not, while the vehicle was detained in that place, take reasonable care of the vehicle, its trailer (if any) or load.

**Duty of insurers to satisfy judgments against persons insured against third party risks.**

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13.(1) If, after a certificate of insurance has been delivered in accordance with the provisions of section 5, a judgment is obtained in respect of any such liability as is required to be covered by a policy of insurance under section 4 and either—

- (i) the liability is covered by the terms of the policy to which the certificate relates and the judgment is obtained against any person who is insured by the policy; or
- (ii) the liability is one, other than an excluded liability, which would be so covered if the policy insured all persons and the judgment is obtained against any person other than one who is insured by the policy;

then, notwithstanding that the insurer may be entitled to avoid or cancel, or may have avoided or cancelled, the policy, the insurer shall, subject to the provisions of this section, pay to the persons entitled to the benefit of the judgement—

- (a) as regards liability in respect of death or bodily injury, any sum payable under the judgment in respect of the liability, together with any sum which, by virtue of any enactment relating to interest on judgments, is payable in respect of interest on that sum;
- (b) as regards liability in respect of damage to property, any sum required to be paid under subsection (1A); and
- (c) any amount payable in respect of costs.

(1A) For the purposes of subsection (1)(b) this subsection requires the payment –

- (a) where that total of any amounts paid, payable or likely to be payable under the policy in respect of damage to property caused by or arising out of, the accident in question does not exceed £1,200,000, of any sum payable under the judgment in respect of the liability, together with any sum which, by virtue of any enactment relating to interest on judgments, is payable in respect of interest on that sum;
- (b) where the total exceeds £1,200,000, of either—
  - (i) such portion of any sum payable under the judgment in respect of the liability as £1,200,000, bears to that total, together with the same proportion of any sum which, by virtue of any such enactment, is payable in respect of interest on that sum; or
  - (ii) the difference between the total of any amounts already paid under the policy in respect of such damage and £1,200,000, together with such proportion of any sum which, by virtue of any such enactment, is payable

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in respect of interest on any sum payable under the judgment in respect of the liability as the difference bears to that sum;

whichever is the less, unless not less than £1,200,000, has already been paid under the policy in respect of such damage (in which case nothing is payable).

(1AA) The insurer may not rely on excess clauses as against a claim by an injured third party.

(1AAZ) *Deleted.*

(1B) In subsection (1) (ii) “excluded liability” means a liability in respect of the death of, or bodily injury to, or damage to the property of any person who, at the time of the use which gave rise to the liability, was allowing himself to be carried in or upon the vehicle and knew or had reason to believe that the vehicle had been stolen or unlawfully taken, not being a person who did not know and had no reason to believe that the vehicle had been stolen or unlawfully taken until after the commencement of his journey and could not reasonably have been expected to have alighted from the vehicle.

In this subsection the reference to a person being carried in or upon a vehicle includes a reference to a person entering or getting on to, or alighting from the vehicle.

- (2) No sum shall be payable by an insurer under the foregoing provisions of this section—
- (a) in respect of any judgment, unless before or within seven days after the commencement of the proceedings in which the judgment was given, the insurer had notice of the bringing of the proceedings; or
  - (b) in respect of any judgment, so long as execution thereon is stayed pending an appeal; or
  - (c) in connection with any liability, if before the happening of the event which was the cause of the death or bodily injury giving rise to the liability, the policy was cancelled by mutual consent or by virtue of any provision contained therein, and either—
    - (i) before the happening of the said event the certificate of insurance was surrendered to the insurer, or the person to whom the certificate of insurance was delivered made a statutory declaration stating that the certificate had been lost or destroyed; or
    - (ii) after the happening of the said event, but before the expiration of a period of fourteen days from the taking effect of the cancellation of the policy, the certificate of insurance was surrendered to the insurer, or the person to whom the certificate was delivered made such a statutory declaration as aforesaid; or

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- (iii) either before or after the happening of the said event, but within the said period of fourteen days, the insurer has commenced proceedings under this Act in respect of the failure to surrender the certificate of insurance.

(3) No sum shall be payable by an insurer under the foregoing provisions of this section, if, in an action commenced before, or within three months after, the commencement of the proceedings in which the judgment was given, he has obtained a declaration that, apart from any provision contained in the policy, he is entitled to avoid it on the ground that it was obtained by the non-disclosure of a material fact, or by a representation of fact which was false in some material particular, or, if he has avoided the policy on that ground, that he was entitled so to do apart from any provision contained in it:

Provided that an insurer who has obtained such a declaration as aforesaid in an action shall not thereby become entitled to the benefit of this subsection as respects any judgment obtained in proceedings commenced before the commencement of that action unless before, or within seven days after, the commencement of that action he has given notice thereof to the person who is the plaintiff in the said proceedings specifying the non-disclosure or false representation on which he proposes to rely; and a person to whom notice of such an action is so given shall be entitled, if he thinks fit, to be made a party thereto.

(4) If the amount which an insurer becomes liable under this section to pay in respect of a liability of a person who is insured by a policy exceeds the amount for which he would, apart from the provisions of this section, be liable under the policy in respect of that liability, he shall be entitled to recover the excess from that person.

(4A) Where an insurer becomes liable under this section to pay an amount in respect of a liability of a person who is not insured by a policy, he shall be entitled to recover the amount from that person or from any person who –

- (a) is insured by the policy, by the terms of which the liability would be covered if the policy insured all persons; and
- (b) caused or permitted the use of the vehicle which gave rise to the liability.

(5) In this section –

- (a) “material” means of such a nature as to influence the judgment of a prudent insurer in determining whether he will take the risk and, if so, at what premium and on what conditions; and
- (b) “liability covered by the terms of the policy” means a liability which is covered by the policy or which would be so covered but for the fact that the insurer is entitled to avoid or cancel, or has avoided or cancelled, the policy.



**Direct right of action.**

13A. Where and insofar as an insurer would be liable to satisfy judgments against persons insured against third party risks, the injured party or parties shall enjoy a direct right of action against the insurer.

**False statements.**

14. Any person who makes a false statement or withholds any material information for the purpose of obtaining the issue of a certificate of insurance under this Act is guilty of an offence.

**Duty to give information as to insurance where claim is made.**

15.(1) A person against whom a claim is made in respect of any such liability as is required to be covered by a policy of insurance under section 4 shall, on demand by or on behalf of the person making the claim—

- (a) state whether or not, in respect of that liability, he was insured by a policy having effect for the purposes of this Act, or would have been so insured if the insurer had not avoided or cancelled the policy,
- (b) if he was or would have been so insured, give such particulars with respect to that policy as were specified in the certificate of insurance delivered in respect of that policy under section 5, and
- (c) where no such certificate was delivered give the following particulars, namely, the registration mark or other identifying particulars of the vehicle concerned, the number or other identifying particulars of the insurance policy issued in respect of the vehicle, the name of the insurer and the period of the insurance cover.

(2) If without reasonable excuse, a person fails to comply with the provisions of subsection (1) of this section, or wilfully makes a false statement in reply to any such demand as aforesaid, he is guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

**Evidence of insurance on application for motor vehicle licence.**

16. Any person applying for a motor vehicle licence under the Traffic Act, or the renewal of such a licence, shall deposit with the Licensing Authority either—

- (a) a certificate of insurance indicating that on the date when the licence comes into operation there will be in force the necessary policy of insurance in relation to the use of the motor vehicle by the applicant or by other persons on his order or with his permission and such further evidence as may be necessary to establish that the certificate relates to such use; or

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- (b) evidence that section 3 does not apply to the motor vehicle at a time when it is being driven under the owner's control.

### **Bankruptcy etc. of insured persons not to affect claims by third parties.**

17. Where, after a certificate of insurance has been delivered under section 5 to the person by whom a policy has been effected, any of the following events happens, that is to say—

- (a) the person by whom the policy was effected becomes bankrupt or makes a composition or arrangement with his creditors,
- (b) the said person dies, and an order is made under section 101 of the Bankruptcy Act for the administration of his estate according to the law of bankruptcy,
- (c) if the said person is a company, a winding-up order is made with respect to the company or a resolution for a voluntary winding-up is passed with respect thereto, or a receiver or manager of the company's business or undertaking is duly appointed or possession is taken, by or on behalf of the holders of any debentures secured by a floating charge, of any property comprised in or subject to the charge,

the happening of that event shall, notwithstanding anything in section 47A of the Bankruptcy Act, not affect any such liability of the said person as is required to be covered by a policy of insurance under section 4, but nothing in this section shall affect any rights conferred by the Bankruptcy Act on the person to whom the liability was incurred, being rights so conferred against the person by whom the policy was issued.

### **Avoidance of certain exceptions to policies and of certain agreements etc. as to risks required to be covered thereby.**

18.(1) Where a certificate of insurance has been delivered under section 5 to the person by whom a policy has been effected, so much of the policy as purports to restrict the insurance of the persons insured by the policy by reference to any of the following matters—

- (a) the age or physical or mental condition of persons driving the vehicle; or
- (aa) a passenger making a claim knew or should have known that the driver was under the influence of alcohol or of any other intoxicating agent at the time of the accident; or
- (b) the condition of the vehicle; or
- (c) the number of persons that the vehicle carries; or
- (d) the weight or physical characteristics of the goods that the vehicle carries; or

- (e) the times at which or the areas within which the vehicle is used; or
- (f) the horse-power or cylinder capacity or value of the vehicle; or
- (g) the carrying on the vehicle of any particular apparatus; or
- (h) the carrying on the vehicle of any particular means of identification other than any means of identification required to be carried by or under the Traffic Act; or
- (i) the holding of a valid driving licence or a valid motor vehicle licence,

shall, as respects such liabilities as are required to be covered by a policy under section 4, be of no effect:

Provided that nothing in this subsection shall require an insurer to pay any sum in respect of the liability of any person otherwise than in or towards the discharge of that liability, and any sum paid by an insurer in or towards the discharge of any liability of any person which is covered by the policy by virtue only of this subsection shall be recoverable by the insurer from that person.

(2) A condition in a policy issued for the purposes of this Act providing that no liability shall arise under the policy, or that any liability so arising shall cease, in the event of some specified thing being done or omitted to be done after the happening of the event giving rise to a claim under the policy, shall be of no effect in connection with such liabilities as are required to be covered by a policy under section 4 of this Act:

Provided that nothing in this subsection shall be taken to render void any provision in a policy requiring the person insured to pay to the insurer any sums which the latter may have become liable to pay under the policy and which have been applied to the satisfaction of the claims of third parties.

(3) Where a person uses a motor vehicle in circumstances such that under section 3 of this Act there is required to be in force in relation to his use of it such a policy of insurance as is mentioned in subsection (1) of that section, then, if any other person is carried in or upon the vehicle while the user is so using it, any antecedent agreement or understanding between them (whether intended to be legally binding or not) shall be of no effect so far as it purports or might be held –

- (a) to negative or restrict any such liability of the user in respect of persons carried in or upon the vehicle as is required by section 4 of this Act to be covered by a policy of insurance; or
- (b) to impose any conditions with respect to the enforcement of any such liability of the user;

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and the fact that a person so carried has willingly accepted as his the risk of negligence on the part of the user shall not be treated as negating any such liability of the user.

For the purposes of this subsection references to a person being carried in or upon a vehicle include references to a person entering or getting on to, or alighting from, the vehicle, and the reference to an antecedent agreement is to one made at any time before the liability arose.

(4) Notwithstanding anything in any other enactment, a person issuing a policy of insurance under section 4 of this Act shall be liable to indemnify the persons or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of those persons or classes of persons.

(5) To the extent that a policy issued for the purposes of this Act—

- (a) restricts the insurance of the persons insured by the policy to use of the vehicle for specified purposes (for example, social, domestic and pleasure purposes) of a non-commercial character; or
- (b) excludes from that insurance —
  - (i) use of the vehicle for hire or reward; or
  - (ii) business or commercial use of the vehicle; or
  - (iii) use of the vehicle for specified purposes of a business or commercial character,

then, for the purposes of that policy so far as it relates to such liabilities as are required to be covered by a policy under section 4 of this Act, the use of a vehicle on a journey in the course of which one or more passengers are carried at separate fares shall, if the conditions specified in subsection (6) below are satisfied, be treated as falling within that restriction or as not falling within that exclusion, as the case may be.

(6) The conditions referred to in subsection (5) above are —

- (a) the vehicle is not adapted to carry more than eight passengers and is not a motor cycle;
- (b) the fare or aggregate of the fares paid in respect of the journey does not exceed the amount of the running costs of the vehicle for the journey (which for the purposes of this paragraph shall be taken to include an appropriate amount in respect of depreciation and general wear); and

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- (c) the arrangements for the payment of fares by the passenger or passengers carried at separate fares were made before the journey began.

### **Keeping of records by insurers.**

19.(1) Every insurer by whom a policy of insurance is issued for the purposes of this Act shall keep a record of the following particulars relative thereto and of any certificates issued in connection therewith—

- (a) the full name and address of the person to whom the policy or certificate is issued;
- (b) in the case of a policy relating to one or more specified motor vehicles, the registration mark of each such motor vehicle;
- (c) the date on which the policy comes into force and the date on which it expires;
- (d) in the case of a policy, the conditions subject to which the persons or classes of persons specified in the policy will be indemnified;

(2) Any insurer to which this section applies shall, without charge furnish to the Licensing Authority under the Traffic Act or to any police officer, on request, any particulars contained in any such record.

(3) Any insurer who fails to comply with the requirements of this section is guilty of an offence.

### **Unauthorised insurers.**

20. Except as otherwise provided for in this Act, any person issuing or renewing a policy of insurance in Gibraltar for the purposes of this Act, not being an approved motor vehicle insurer, is guilty of an offence and is liable, on conviction on indictment, to imprisonment for 2 years and to a fine or on summary conviction to a fine of £5,000.

21.(1) The Government may make rules –

- (a) prescribing any matter which may be prescribed under the provisions of this Act;
- (b) providing for the exemption from all or any of the provisions of this Act of motor vehicles other than those mentioned in section 3(4) of this Act whether generally or specifically or subject to conditions; and
- (c) providing for such other matters as are reasonably necessary for or incidental to the due administration of this Act.

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(2) There may be prescribed in respect of a breach of any rule imprisonment for three months or a fine of £250.

### **Penalty.**

22. A person who is guilty of an offence under this Act for which no penalty is specified is liable, on summary conviction, to imprisonment for three months and to a fine of £250.

### **Repeal.**

23. The Insurance (Motor Vehicles) (Third Party Risks) Act is repealed.

### **Transitional provisions.**

24.(1) Any policy issued or renewed or any certificate of insurance delivered prior to the coming into operation of this Act and any policy issued or renewed or any certificate of insurance delivered during the period ending with the 31st October 1986 by a person approved by the Government for the purposes of the Insurance (Motor Vehicles) (Third Party Risks) Act, or by a person authorised to carry on motor vehicle insurance business under the Insurance Companies Act complying in all respects with the provisions of the Insurance (Motor Vehicles) (Third Party Risks) Act before its repeal by section 23 of this Act, shall be deemed to comply with the requirements of this Act.

(2) Any policy to which subsection (1) of this section shall, unless it has been cancelled, suspended, surrendered or otherwise ceased to have effect, remain valid for the purposes of this Act for a maximum period of 12 months from the date of the issue or renewal of the policy.

(3) Nothing in this section shall affect—

- (a) the responsibilities, rights and liabilities of any person under a policy of insurance to which subsection (1) applies; or
- (b) the validity of any condition contained in such a policy, being a condition which was permitted to be imposed under the provisions of the Insurance (Motor Vehicles) (Third Party Risks) Act.

(4) Any reference in this section to the Insurance (Motor Vehicles) (Third Party Risks) Act includes a reference to the Motor Vehicles Insurance (Third Party Risks) Act.