

Motor Insurance: Consideration of the 'Vnuk' Judgement consultation

Written submission by the Sport and Recreation Alliance

The Sport and Recreation Alliance is the umbrella body for governing and representative bodies of sport and recreation in the UK. We represent 320 members including organisations like the FA, the Rugby Football Union, British Athletics, Ramblers, British Rowing and, from the motorsports sector, the Motor Sports Association (MSA) and the Amateur Motorcycle Association (AMCA). We also represent many organisations who rely on motor vehicles to assist in their sport and recreation activities.

The Sport and Recreation Alliance brings together the sport and recreation sector and supports members to tackle challenges and take advantage of opportunities. We are the voice of the sector with Government, policy makers and the media. We help get the nation active at the grassroots by providing advice, support and guidance.

Whilst we have ensured that our response reflects the views of our members, we would encourage Government to read the individual responses submitted by the motor sport governing bodies and those from other sport and recreation organisations. These will contain more detail on the effect of any change in the law regarding the insurance of motor vehicles on specific parts of the sport and recreation sector.

Key comments

We have provided more detailed answers to the relevant consultation questions below. However, before turning to those questions, we would make the following key points:

- The Government sports strategy, *Sporting Future*, highlights the positive role that sport can play, both in generating benefits to individuals and communities from taking part but also as a driver of economic growth. In particular, the strategy emphasises the significant economic contribution made by the motorsports sector to the UK economy. This contribution is demonstrated clearly in the recent Motorsport Industry Association [report](#) which found that the sector contributed £9 billion to the UK economy in 2012, with 4,300 companies and 41,000 jobs linked to motorsport. The Department for Transport's recent decision to allow motor racing events to take place on closed public roads also signals the Government's desire to support the growth of motor racing in the UK.
- The Alliance shares the Government's disappointment with the judgement made by the European Court of Justice on motor insurance (the Vnuk Judgement). Without any specific provisions made for use in a sporting context, changing domestic legislation on motor insurance to ensure it reflects European law would have a hugely negative impact on motorsports and, in some cases, could threaten the ability of the sport to put on racing events. By extension it would also severely undermine the economic benefits that motor sports brings to the UK economy.
- If the Government were to enact the Vnuk ruling, it would also heavily affect sport and recreational activities which use motor vehicles either to transport equipment across private

land, to transport participants to different sections of a course, or to assist in essential operation of the activity itself. Forcing participants or clubs who run activities to pay insurance for using a motor vehicle on private land will seriously affect these sports' ability to function.

Questions

Q1. 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?

Our view is that the Government should add a sunset clause to any new regulations on this subject.

As the Government has already expressed its opposition to any change to the status quo on motor insurance in the consultation document, we believe that there is no obvious case for extending any changes made to the regulations once the UK has left the EU.

Q3. 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?

We believe that if the Government changes the domestic law on motor insurance to the comprehensive option then it would seriously affect those of our members for whom motor vehicles form an essential part of their sport to hold sporting events or activities.

Based on feedback we have received from insurance specialists in the field, if domestic law were changed in line with the comprehensive option insurance providers will not be able to provide cover for motor sports events. This is due to:

- There being no firm claim figures;
- The vehicles used in a motor sport event not being registered;
- The vehicles not meeting the construction and use regulations required for cover under the Road Traffic Act;
- The vehicles are often driven by people without any type of license or under a license specific to that sport.

For these reasons, it would be extremely difficult, if not impossible, for an organiser to put on a motor sport event.

Any change in the domestic law in line with the comprehensive option will also affect those sports or recreational activities who use motor vehicles to support their activities, such as golf and gliding. For example, gliding clubs use a variety of old roadworthy vehicles that are modified for special on-airfield use. According to the British Gliding Association, these vehicles would be unlikely to pass an MOT test or be insurable as they are no longer legally roadworthy, thus seriously affecting the ability of gliding clubs to operate. Even if the vehicles could be insured, the increase in the cost of participating in these activities that will come from insuring any motor vehicle used to support these activities will deter many people from taking part. As mentioned earlier, this would contradict the Government's strategic objective set out in *Sporting Future* to get more people participating in sport.

Q4 Which of the Commission's four suggestions do you believe would be best for amending the Directive? Do nothing; Required guarantee schemes; Insurance required when vehicle is used in traffic; Take some vehicles out of scope

Q5. 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?

We believe that the best option for amending the directive is option three to require insurance only when a vehicle is used in traffic. This would appear to set a sensible baseline position and still leaves

open the option of derogating certain vehicles, such as those for use in a competitive or sporting environment, as required.

Irrespective of what judgement the Commission decides to take on this matter, we would urge the Government to work closely with the Commission to come up with a sensible solution that protects relevant sport and recreational activities from any negative consequences and ensures individuals are not forced out of participating in these sports/activities due to cost or the lack of availability of adequate insurance cover.

Nonetheless, while we believe that the third option is better compared with the comprehensive option, it still leaves some issues that would need to be clarified where vehicles are used in a sport and recreation context. In particular, the Commission defines 'the context of traffic' as "where the use of a vehicle is for the transport of persons or goods...in areas where the public has access in accordance with national law". We would welcome some clarification on the precise scope of 'areas where the public have access in accordance with national law' since although many sports events take place on private land, some form of public access may be granted e.g. for spectating or other access purposes. Similarly, some sports activities may involve the use of vehicles on land accessible by the public but on a supervised basis i.e. not 'in traffic' in the common understanding of the term.

Q6. 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"?

See previous answer. If it were to be used as the basis for compulsory insurance, we believe the scope of 'areas where the public has access in accordance with national law' would need to be clearly defined. Without a clear definition, it is possible that that it would become very difficult or costly to insure vehicles used in certain sporting contexts.

Q7. Do you think government should make use of the power available to derogate certain vehicles in the comprehensive and amended directive options?

Q8. Which factors provide the most suitable basis for deciding which types of newly-in-scope vehicles to derogate?

We believe that the Government should, where necessary, make use of the power available to derogate certain vehicles, for example vehicles used to compete in competitive sports or used to support other sporting/recreational activities. This power could be used under both the comprehensive and amended directive options.

However, we understand that derogation, in and of itself, may still enable compensation to be claimed from the MIB and that the MIB may seek to recoup these costs from the uninsured user. In this context, any use of derogations for sports vehicles should ensure that users are not exposed to additional costs arising from the MIB seeking to recoup compensation otherwise it will still be difficult/costly to insure vehicles for sporting purposes. This may require bespoke arrangements to be put in place for vehicles used in a sporting context.

Q13. Should all SORN vehicles be required to have third party insurance under the comprehensive option? Yes or No?

Q14 Would there be problems with SORN under the amended Directive option?

We have no specific comment but note that that the amended directive option appears to require the fewest changes to the existing SORN system and which would lend weight to the arguments for the Commission to pursue the amended directive option.