

**EXPLANATORY MEMORANDUM TO
THE MOTOR VEHICLES (ELECTRONIC COMMUNICATION OF CERTIFICATES
OF INSURANCE) ORDER 2010**

2010 No. 1117

1. This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

2.1 This instrument is made under sections 8 and 9 of the Electronic Communications Act 2000. It amends the Road Traffic Act 1988 to allow insurers (or their agents) to deliver to the insured motor insurance certificates by electronic means. The amendments include provisions to allow the insured (whether he has a paper or an electronic certificate) to declare to the insurer by electronic means that the policy has ceased to have effect, and to provide for a legible printed copy, or on-screen version in the case of production to the police, of an electronic certificate to be accepted as evidence of insurance. The amendments also allow, in the case of paper issued certificates, for the insured to declare to the insurer by electronic means that the certificate has been lost or destroyed as an alternative to making a statutory declaration.

2.2 The instrument also makes consequential amendments to the Motor Vehicle (Third Party Risks) Regulations 1972 (S.I. 1972/1217).

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 The provision (section 147(5)) which makes it an offence for a person to fail to comply with the necessary surrender or declaration requirements is modified in relation to electronic certificates.

4. **Legislative Context**

4.1 By virtue of section 147(1) of the Road Traffic Act 1988, a policy of motor insurance is of no effect unless the insurer delivers to the insured a certificate of motor insurance in the prescribed form. Where a certificate has been delivered, the insurer's liability continues as set out in section 151, unless his liability is ended under section 152. Two of the ways in which liability is ended under section 152 are where the certificate is surrendered to the insurer or where the insured makes a statutory declaration saying that it has been lost or destroyed. Section 147(4) requires the insured to surrender the certificate to the insurer where the policy has been cancelled by mutual consent or by virtue of any other provision in the policy. It also requires the insured to make a statutory declaration to the insurer if the certificate has been lost or destroyed. A person failing to comply with section 147(4) is guilty of an offence under section 147(5).

4.2 Section 165(1) and (2)(a) of the Road Traffic Act 1988 empower the police to require production of evidence of insurance. A person failing to comply is guilty of an offence.

5. Territorial Extent and Application

5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

6.1 Paul Clark MP, Parliamentary Under Secretary of State, has made the following statement regarding human rights:

“In my view, the provisions of the Motor Vehicles (Electronic Communication of Certificates of Insurance) Order 2010 are compatible with the Convention rights.”

7. Policy background

• What is being done and why

7.1 The main change made by the order is to permit the delivery of an insurance certificate by electronic means. Current legislation does not expressly permit this. The order will allow a certificate to be issued as an email attachment or to be issued by means of giving to the insured access to it via a website. The insurer will be able to do this only where the insured person has agreed to electronic delivery. Whether issued as an email attachment or by giving access via a website, the certificate must under the new provisions be communicated to the insured no later than 4 days after its issue or renewal. This mirrors existing provisions for the delivery of a paper document certificate.

7.2 The order also makes changes as regards the surrender of a certificate where the policy has been cancelled by mutual consent or by virtue of any other provision in the policy (see paragraph 4.1 above). The order provides that, for certificates electronically communicated, the insured must either confirm to the insurer electronically (email) that the policy has ceased to have effect or deliver to the insurer a legible printed copy of the certificate endorsed with a signed statement confirming that the policy has ceased to have effect. For other certificates, a person will be able either to confirm electronically (email) to the insurer that the policy has ceased to have effect or to return the certificate to the insurer (as already provided for in the provisions in force prior to the amendments by this order).

7.3 Where a person's certificate which was not communicated electronically has been lost or destroyed, the regulations will allow a person to declare to the insurer electronically (by email) that it has been lost or destroyed as an alternative to the existing requirement of having to make a statutory declaration. (A statutory declaration is by virtue of section 5 of, and Schedule 1 to, the Interpretation Act 1978 “a declaration made by virtue of the Statutory Declarations Act 1835”. Sections 18 and 20 in particular of that 1835 Act make provision as to the persons before whom, and the form in which, a statutory declaration is to be made). This is intended to ensure that the procedures and consumer choice in respect of certificates of insurance, whether or not communicated electronically, are equivalent.

7.4 In cases where the insured applies to pay for a vehicle excise licence (tax disc) at the Post Office, the amendment to the regulations will allow the insured to produce a legible printed copy of the electronic certificate as evidence of insurance. The regulations will not permit the insurance to be evidenced to the Post Office by showing the certificate in any other format (for example via access to the web).

7.5 If the police ask for evidence of insurance, the regulations will allow the insured to show a certificate accessed via a website, or to show the email attachment if that was how the certificate was sent to him, or to produce a legible printed copy of the certificate. The officer must of course be satisfied (as with production of paper certificates) that he is indeed seeing the insured's certificate if he is shown it on the web or as an email attachment.

- **Consolidation**

7.6 As the regulations which the order amends have been amended a number of times, we considered consolidation. However, it is not appropriate to consolidate them by this order because that would entail mixing an order with regulations, which is not appropriate. In parallel with this instrument a small amendment is also being made to the regulations by the Motor Vehicles (Third Party Risks) (Amendment) Regulations. That amendment could not be made in this instrument as it relies on different powers. The practicability of consolidation will be considered when any further amendments come to be made.

8. Consultation outcome

8.1 A 12-week public consultation in June 2007 found widespread support for allowing electronic insurance certificates. A copy of the consultation document can be accessed at

<http://webarchive.nationalarchives.gov.uk/+http://www.dft.gov.uk/consultations/archive/2007/electcertmotorins/>

There was a very low response rate – only 22 responses were received, mostly from the insurance industry.

8.2 Further discussions with the insurance industry, and with the AA on behalf of motorists, were held in December 2008, April 2009 and October 2009. The discussions focused on how regulations could best work in practice. The Department wrote to the industry, the AA, the police and DVLA (who for this purpose represent the Post Office) in December 2009 inviting comments on draft legislation. Account of their views has been taken when preparing the draft regulations and draft order.

9. Guidance

9.1 The Department for Transport does not plan to issue guidance in relation to the amendments.

10. Impact

10.1 There is no adverse impact on business, charities or voluntary bodies. The provisions inserted by the order are permissive; insurers can choose whether to deliver certificates as paper documents as they do currently or by electronic means. They do not

require the insurer to do one or the other. And they do not require the customer to accept one or the other. The insurance industry has estimated that the financial savings they could make from electronic certificates could amount to some £12 million. In the competitive UK insurance market, lower industry costs should lead to reduced premiums for motorists.

10.2 There is no adverse impact on the public sector. This is for the same reasons as those mentioned at 10.1 above.

10.3 An impact assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 There is no need to minimise the impact on small business because there is no adverse impact. This is for the reasons given at 10.1 above.

11.3 The basis for the final decision that no action apart from the making of the order itself needs to be taken to assist small business is that the amendments are permissive: they assist small business by giving it the choice mentioned at 10.1 above.

12. Monitoring & review

12.1 The Department has no plans for formal monitoring and review of how the new provisions are working. But the Department will be kept informally updated by the industry on how the provisions are working in practice.

13. Contact

13.1 Pauline Morgan at the Department for Transport Tel: 020 7944 2461 or e-mail: Pauline.morgan@dft.gsi.gov.uk can answer any queries regarding the instrument.