

FIFTH MOTOR INSURANCE DIRECTIVE INSTRUMENT 2007

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule-making power);
 - (2) section 156 (General supplementary powers); and
 - (3) section 157(1) (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. (1) Subject to (2), this instrument comes into force on 11 June 2007.
- (2) The amendment to the defined term 'State of the risk' in Annex A to this instrument comes into force when and if HM Treasury amend paragraph 6(3) of Schedule 12 to the Act in a way which corresponds with that amendment.

Amendments to the Handbook

- D. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- E. The Insurance: Conduct of Business sourcebook (ICOB) is amended in accordance with Annex B to this instrument.

Citation

- F. This instrument may be cited as the Fifth Motor Insurance Directive Instrument 2007.

By order of the Board
24 May 2007

Annex A

Amendments to the Glossary of definitions

In this Annex, underlining indicates new text and striking through indicates deleted text.

...

claims representative a person appointed by a motor vehicle liability insurer to satisfy the requirements of *threshold condition 2A* or ~~COB 6.8.20R~~ ICOB 7.6.2R.

...

Fifth Motor Insurance Directive the European Parliament and Council Directive of 11 May 2005 amending Council Directives 72/166/EEC, 84/5/EEC, 88/357/EEC and 90/232/EEC and European Parliament and Council Directive 2006/26/EC relating to insurance against civil liability in respect of the use of vehicles (No 2005/14/EC).

...

injured party (in *ICOB 7.6*)

~~a person who claims damages as a result of any loss or injury suffered in, or as a result of, an accident which occurs in an EEA State other than his usual EEA State of residence which is caused by the use of a motor vehicle insured and normally based in an EEA State.~~

a resident of the EEA entitled to compensation in respect of any loss or injury caused by vehicles.

[Note: article 1(2) of Directive 72/166/EC (First Motor Insurance Directive)]

...

motor vehicle liability claims handling rules ICOB 7.6.8R to ICOB 7.6.11G.

...

normally based (in *ICOB*) (in relation to a vehicle):

(a) the territory of the EEA State of which the vehicle bears a registration plate; or

- (b) in cases where no registration is required for the type of vehicle, but the vehicle bears an insurance plate or a distinguishing sign analogous to a registration plate, the territory of the EEA 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 EEA State in which the keeper of the vehicle is permanently resident.

[Note: article 1(4) of Directive 72/166/EC (First Motor Insurance Directive)]

...

State of the risk

(in accordance with paragraph 6(3) of Schedule 12 to the Act (Transfer schemes: certificates)) (in relation to the EEA State in which a risk is situated):

- (a) if the insurance relates to a building or to a building and its contents (so far as the contents are covered by the same policy), the EEA State in which the building is situated;
- (b) if the insurance relates to a vehicle of any type, the EEA State of registration;
- (ba) if the insurance relates to a vehicle dispatched from one EEA State to another, in respect of the period of 30 days beginning with the day on which the purchaser accepts delivery, the EEA State of destination (and not, as provided by sub-paragraph (b), the EEA State of registration);

[Note: article 4(4)(4a) of the Fifth Motor Insurance Directive]

- (c) ...

...

vehicle

any motor vehicle intended for travel on land and propelled by mechanical power, but not running on rails, and any trailer whether or not coupled.

[Note: article 1(1) of Council Directive 72/166/EEC (First Motor Insurance Directive)]

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Annex B

Amendments to the Insurance: Conduct of Business sourcebook (ICOB)

In this Annex, underlining indicates new text and striking through indicates deleted text.

...

Purpose

- 1.1.2 G (1) ...
- (2) *ICOB* implements, in part, provisions contained in a number of EC directives:
- (a) ...
- ...
- (e) the *Fourth* and the *Fifth* Motor Insurance Directives, in respect of *claims* made by an injured parties ~~EEA resident~~ arising from a motor accidents in the *EEA* ~~but outside his country of residence~~.

...

Motor vehicles normally based in the UK

- 1.3.13 R Notwithstanding anything in this section, the *motor vehicle liability claims handling rules* apply to a *motor vehicle liability insurer* in respect of a *vehicle normally based in the United Kingdom*.

...

- 7.1.5 G All of this chapter, except *ICOB* 7.6, applies to *claims* made by *retail customers*. Part of *ICOB* 7.3, all of *ICOB* 7.4 and all of *ICOB* 7.7 apply to *claims* made by *commercial customers*. *ICOB* 7.6 applies to certain claims by *injured parties* arising from an accidents occurring in an the EEA State other than the EEA State of residence of the injured party, involving the use of a vehicle-vehicles. ~~insured and normally based in an EEA State.~~

Purpose

- 7.1.6 G (1) ...
- ...
- (3) The purpose of *ICOB 7.6* is to transpose certain requirements of the *Fourth Motor Insurance Directive* and the *Fifth Motor Insurance Directive*.
- ...
- 7.6 Motor vehicle liability insurers: claims representatives and claims handling rules
- Motor vehicle liability insurers: claims representatives
- 7.6.1 G ...
- ...
- 7.6.3 R (1) When a *motor vehicle liability insurer for which the United Kingdom is the Home State* appoints a *claims representative*, it must give the *MIIC*, and each other *information centre*, the *claims representative's* name, business address, telephone number and effective date of appointment within ten *business days* of that appointment being made.
- (2) ...
- [Note: article 5(2) of the *Fourth Motor Insurance Directive*]
- 7.6.4 R A *motor vehicle liability insurer for which the United Kingdom is the Home State* must ensure that each *claims representative* is:
- (1) resident or established in the *EEA State* for which it is appointed;
- (2) capable of examining cases in the official language or languages of the *EEA State* of residence of the *injured party*;

- (3) responsible for, and has sufficient delegated authority from the *motor vehicle liability insurer* for which it is appointed, to be able to:
- (a) handle and settle;
 - (b) collect all information, and take all measures, reasonably necessary to negotiate a settlement of; and
 - (c) represent, or arrange appropriate representation for, the *motor vehicle liability insurer* (whether in negotiations, in court or otherwise) in relation to;

claims, by an injured party arising from an accident occurring in a *EEA State* other than the *EEA State* of residence of the *injured party*, and caused by the use of a *vehicle insured through an establishment, and normally based, in an EEA State other than the EEA State of residence of the injured party.* ~~involving the use of a vehicle insured and normally based in an EEA State.~~

[Note: article 1(1) and (2) and Article 4(1), (4) and (5) of the Fourth Motor Insurance Directive]

...

Motor vehicle liability ~~insurers~~: claims handling rules

- 7.6.8 R (1) Within three *months* of a receipt of a *claim* for *damages caused by a vehicle normally based in the United Kingdom* from an *injured party*, or his representative, the *motor vehicle liability insurer* must (directly, or through a *claims representative*):

- (a) ...

...

- (4) ...

[Note: article 4(6) of the Fourth Motor Insurance Directive and Article 4(4)(4e, first paragraph) of the Fifth Motor Insurance Directive]

...

- 7.6.11 G (1) ~~ICOB 7.6.8R to ICOB 7.6.10R apply only to claims for damages for loss or injury suffered in, or as a result of, an accident which occurs in an EEA State other than an injured party's usual state of residence, which is caused by the use of a motor vehicle insured and normally based in an EEA State.~~
- (2) The rules and guidance at ICOB 7.6.1G to ICOB 7.6.10R are not intended to, and do not, restrict any rights which the injured party, or its motor vehicle liability insurer, or any other insurer acting on its behalf, may have and which would enable any of them to begin legal proceedings against the person causing the accident or that person's, or the ~~motor vehicle's~~ vehicle's, insurers.

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ICOB TP 1 Transitional Provisions

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provision	Transitional provision: dates in force	Handbook provision: coming into force
...					
<u>12</u>	<u>ICOB 7.6.8R to ICOB 7.6.11G</u>	<u>R</u>	<u>The amendments to these provisions made by the Fifth Motor Insurance Directive Instrument 2007 do not apply in relation to claims received by a motor vehicle liability insurer or a claims representative on or before 10 June 2007.</u>	<u>From 11 June 2007</u>	<u>11 June 2007</u>