



Department for  
**Transport**

## Consultation Document

on

**Proposals for the introduction and operation of a  
scheme for continuous insurance enforcement of  
statutory motor insurance**

**Response from:**

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## Response Department for Transport

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### Executive summary

The BVRLA and its Members are pleased to provide their comments to Department for Transport's proposals for implementing a new offence of being the registered keeper of an uninsured vehicle. We remain grateful for the Government's willingness to listen carefully to our comments in the stakeholder group and a separate meeting to look specifically at the issues for rented and leased vehicles.

While we are supportive of the policy intention behind these proposals, in particular, the intention to reduce uninsured driving, we wish to ensure that the Department fully recognises that the legal responsibility for insuring the motor vehicle does not rest with our members, who as the legal owner are of necessity recorded as the registered keeper with the DVLA. The legal responsibility of insuring the motor vehicle, whilst it is subject to a valid hire or lease agreement rest with the customer who is renting or leasing the motor vehicle.

We understand the need to enforce from the DVLA registered keeper records, but would highlight the inequity of holding our members, as the registered keeper, responsible for the actions of their customers and in doing so importantly denying the customer their legal right to defend their position or indeed make a formal representation. In addition, by holding our members' responsible it does not act as a deterrent to correct behaviour as the true offender is not being enforced against or indeed held directly responsible for their actions. We explain in detail how holding our members directly responsible would see them inappropriately being held responsible for fine and administration costs of over £3.3 million per annum. This inequity and cost would be easily addressed if our members were able to legally transfer liability onto the customer for the offence while the motor vehicle was subject to a valid hire or lease agreement. You will note that imposing these costs on our members is not only unjustifiable, but would be contrary to the Government's call to avoid imposing legislation which imposes excessive administrative costs and burdens, on businesses. This is particularly relevant in the context of the current economic climate when all businesses are endeavouring to control costs and protect jobs.



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In the interest of natural justice, it is vital that our members are not inappropriately targeted as the offender. Instead, we urge the Department to follow the well established principle of our members being able to transfer liability and in doing so help to support the enforcing authorities by equipping them with the information they need to target the legally responsible customer who has day-to-day operational control of the vehicle and keepership of the vehicle temporarily transfers to them. This importantly enables the due process of law to be applied, which ensures the alleged offender is afforded the legal right to either defend their position or to be held directly responsible for their actions as the 'keeper' of the vehicle.

We note the argument that our members, as legal owners and suppliers of the vehicle, should automatically assume legal responsibility for the vehicle user's (person who has contractual day to day operation control of the vehicle) failure to hold a valid motor insurance. To adopt such an approach would not only erode the fundamental principles of English law and would be akin to holding a TV rental company responsible for their customer failing to purchase a TV licence.

It would also be wholly inappropriate and inequitable to require our members to act as *quasi* police officers to enforce the law simply because we have leased or rented the vehicle to the customer. Most of our members would contractually oblige their customer to operate the vehicle legally, including holding a valid motor insurance during the term of the lease or hire agreement. This is largely based on responsible trading principles and helps to protect the asset owner should the vehicle be stolen or written off. This is no different to the circumstances when a person buys a freehold property funded by a mortgage being obliged to take out buildings insurance.

We further question what detailed regulatory impact assessment the department has undertaken to assess the impact these proposals would have and in particular how through an evidence based approach what level of uninsured motoring exists amongst the fleet sector. Given the estimated cost burden of £.3.3 million this approach will place on our members, which is clarified in further detail below, we would hope that the department can justify why our members should absorb this additional cost.

It may be helpful to explain here the types of business that our members operate:



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### **Leasing members**

In general, vehicle leasing, sometimes referred to as long term rental, is an arrangement where the user (the hirer) simply hires the use of the vehicle and assumes operational responsibility, including insuring the vehicle, for a predetermined period and mileage at fixed monthly rental from the owner (the leasing company). Legal ownership is, in the majority of cases, retained by the leasing company.

### **Short term rental members**

Rental Members offer daily, weekly and monthly rental of vehicles to corporate and retail customers. As explained above, the contract hire and daily rental Members are the owners of the vehicle. In the majority of cases, corporate customers will rent vehicles and insure them on their own insurance policies.

### **Members as the registered keeper**

It may be relevant for the department to understand the key reasons why our members, as the legal owners are required to be recorded as the registered keeper with the DVLA.

With increasing focus on the UK motorist to operate legal and compliant vehicles, our members are required to be recorded as the registered keeper to ensure that the vehicle is maintained and taxed in accordance with UK law.

It is also important to explain that while the vehicle is subject to a valid hire or lease agreement, legal ownership of the vehicle can never transfer to the customer. The primary agreements provided by our members are not purchasing agreements, but simply one where the customer is able to use our vehicles for a fixed agreed period.

As such, it is vital that our members remain as the registered keeper as it reduces the threat of the customer purporting to be the legal owner, especially as they do not have possession of the vehicle documents such as the V5. Our members recognise that holding the V5 in their name not only provides security, but control over their asset. The threat of customer holding out to be the legal owner of the vehicle or hold out to have good title to be able to sell the leased or rented vehicle has proven to be a real problem where vehicles are easily sold both in the UK and abroad. In recognition of this difficulty, the DVLA has been instrumental in assisted our sector by ensuring that all EU Member States legally recognise the Vehicle on Certificate (VE103) as a valid temporary substitute to the V5 to assist with compliance when travelling in mainland Europe.



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Security over the vehicle extends to assisting our members in securing restoration to them as the rightful owner if a vehicle is seized or impounded by various Government agencies, e.g. HM Revenue and Customs, VOSA for misdemeanours committed by the hirer (the customer). This has helped ensure that the vehicle is not disposed of without our prior knowledge.

In order to provide an enhanced fleet management service to their customers, such as electronic fleet re-licensing etc, our members have no choice but to be recorded as the registered keeper. Electronic fleet re-licensing, has proved invaluable in improving compliance and reducing costs for both members and DVLA.

### **Other fine regimes which allow transfer of liability**

It is important to note that the fine regimes we mention below are not concerned with identifying the driver of the vehicle, we are not in any way suggesting that a continuous insurance enforcement regime would enable a private motorist to transfer liability. We are simply proposing that where the registered keeper is a leasing or rental company the legislation should allow for transfer of liability to the customer who has entered into a valid commercial agreement and who has the legal responsibility for insuring the motor vehicle during the duration of the agreement.

Our Association has, since the 1970s, worked successfully with both the Home Office and Department for Transport to ensure that the person who is illegally using or operating a motor vehicle is held to account for their actions. In doing so, the offender is punished for the crime which in itself acts as a powerful deterrence from the offence being repeated, we have outlined some these areas in Annex A.

A sensible example is section 172 of the Road Traffic Act 1988, under this section the "*person keeping the vehicle*" is expected to give information as to the identity of the driver to the Police when requested to do so. However, the interpretation within the Act, of the "*person keeping the vehicle*" is not defined. The Act 1988 stipulates that it is the person keeping the vehicle and not the registered keeper who is under a legal duty to identify the driver. As is sensible in the first instance this is taken to be the registered keeper as per DVLA records.

It is important to note at this juncture, that the registered keeper <u>is entitled</u> to rebut the presumption that they are the " <i>person keeping the vehicle</i> ".
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It may be helpful to refer to the interpretation taken by the courts where the registered keeper is a hire or leasing company, they are deemed to have disposed of keepership to their customer, who has the day-to-day operational control of the vehicle.

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We refer to the decision of the Court of Appeal case of **R. v. Parking Adjudicator ex-parte Wandsworth, London Borough Council [1996]**. The Court held that the disposal and acquisition of "keepership" of a vehicle necessarily involved "both a degree of permanence and the right to use the vehicle on the road". Stuart Smith LJ said:

*"The disposal and acquisition of the vehicle must involve the right to keep the vehicle. The concept does, however, involve both a degree of permanence and the right to use the vehicle."*

The criteria applied here are not just the length of time the vehicle is leased or rented, but the degree of permanence of the disposal. Where the registered keeper is effectively offering the use of a vehicle by way of a lease, keepership was held to pass on to the lessee by virtue of the lease. Indeed this is the interpretation that has been taken by the courts since 1996.

It may also be relevant here to note that the legislation for parking fines and other road traffic offences contains strict definitions for hire company and hire agreement which restricts the circumstances that corporate customers can transfer fines. For example:

*Extract from No. 2757 The Bus Lane Contraventions (Penalty Charges, Adjudication and Enforcement) (England) Regulations 2005*

(4) In this regulation—

“hiring agreement” means an agreement for the hire of a vehicle—

(i) under the terms of which the vehicle is let to the hirer for a fixed period of any duration (whether or not that period is capable of extension by agreement between the parties or otherwise);

(ii) which contains such particulars as may for the time being be prescribed for the purpose of section 66(8) (offences relating to hired vehicles) of the Road Traffic Offenders Act 1988(a); and

(iii) which is not a hire purchase agreement within the meaning of the Consumer Credit Act 1974(b);



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### Regulatory Impact Assessment

The regulatory impact assessment within the consultation seems to be lacking a number of key areas and leaves a number of questions unanswered particularly relating to the cost and benefits. We see these unanswered questions as:

- What is the source of the information for the 2 million uninsured drivers in the UK?
- Can this 2 million be split by business and consumer?
- What are the costs of compliance for business motorists when compared against the number of business motorists which are driving uninsured?

None of these areas are addressed in the RIA and we see this as a vital part of any RIA especially in the current economic climate where any cost burden on business should be fairly addressed and justified before implementation.

We would welcome clarity from the department on this issue.



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### Specific comments

#### **Q Do you have any views on the process for warning those who appear from the record to be uninsured?**

We think that a warning letter is a sensible approach but it is unlikely that if a letter is issued in error that people will be happy to simply ignore the letter. We would suggest that most individuals will want to respond in some way to confirm they have a motor insurance rather than worry about incurring a fixed penalty. Perhaps the department could consider allowing people to contact the MID with proof of their insurance and an acknowledgment being issued from the MID that no further enforcement action will be taken.

We would also recommend that the process recognises the benefits for business of an electronic notification that a vehicle is being operated without insurance. Electronic notification will ensure that letters do not get lost in the post and if more than one vehicle is showing as uninsured for the same registered keeper only one electronic notification would need to be sent rather than several letters to the same address.

#### **Q Are the exceptions we have proposed appropriate?**

No, we feel that the exceptions should allow for transfer of liability for rental and leasing companies. This would allow the true offender to be penalised for the offence and not see our members being used as unpaid fine collectors. If transfer of liability is not permitted the effectiveness of the regulation is eroded and our members incur unnecessary costs in additional invoicing and administration.

If our members are unable to transfer fines onto their customers we estimate that the administration and cost burden will total £3.3 million per annum. This is based on .8%<sup>1</sup> of our members' fleet receiving a fine and covers all the administration costs of recharging fines. If the department drafts the legislation to allow transfer of liability this administration and costs burden is reduced to £250,000 per annum.

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<sup>1</sup> The sample of vehicles found to be uninsured during Operation V79-2008 in March 2008

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### Detailed cost calculation

No transfer of liability		Transfer of liability
.8% of the fleet receive a fine for being the keeper of an uninsured vehicle - 20,800 fines		
<i>Paying and re-charging a fine</i> <ul style="list-style-type: none"> <li>• Fine received and allocated to correct customer</li> <li>• Fine paid, cheque raised to TfL</li> <li>• Invoice raised to customer for fine incurred</li> <li>• Queries answered and investigated relating to the fine</li> <li>• Invoice paid, payment allocated to account</li> </ul>		<i>Transferring a fine</i> <ul style="list-style-type: none"> <li>• Identify customer</li> <li>• Provide customer details to MID</li> </ul>
<b>Total administration cost</b>	£1.3 million @ £60 per fine	£250,000 @ £12 per fine
<b>Cost of fines at £100</b>	£2 million	£0.00
<b>Total burden on BVRLA members</b>	<b>£3.3 million</b>	<b>£250,000</b>

**Q Our proposal is that if an individual fails to respond and to take action, in spite of a warning letter, a £100 penalty is payable, which will be reduced to £50 if paid within 21 days. Do you think this is appropriate?**

The level of penalty seems sensible and a discount for prompt payment follows the spirit of other fine regimes. If the legislation does not allow our members to transfer the fine to the customer, there could be investigatory work required by our members to establish whether or not the fine should be paid or insurance is actually in place. We therefore recommend that the discount period is extended to 28 days to allow this work to take place. It would be grossly inequitable to penalise our members and their customers in making them pay the full fine simply because establishing whether the fine has been correctly issued took longer than anticipated.

**Q Do you have any comments on the proposed regulations for immobilisation, removal and disposal of vehicles?**

We would welcome clarification from the department on the process of notification to the registered keeper of a vehicle being immobilised or removed. The assumption cannot be made that the registered keeper will be aware and we strongly suggest that the department looks at other fine regimes which include immobilisation or removal. It is vital that a notification is sent immediately to the registered keeper especially if the



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vehicle is a rental or leased vehicle as they will not be aware that the vehicle has been seized.

In addition, prior to the disposal of the vehicle it is essential that a check is conducted to see if there is any financial interest in the vehicle. This is vital as the department cannot sell a vehicle and offset the proceeds from sale against the liabilities of the customer who does not legally own the vehicle.

### **Q Do you have any views on what would be reasonable in dealing with persistent offenders in such circumstances?**

In terms of dealing with persistent offenders this again highlights the need for transfer of liability so the true offender can be punished. By not allowing transfer of liability the true persistent offender is hidden and cannot be enforced against hence the erosion of an effective enforcement regime against uninsured drivers.

With regards to dealing with true persistent offenders we would suggest that other fine regimes are investigated to determine the correct level of persistently offending, for example, the London congestion charge scheme defines a persistent offender as someone with three or more outstanding fixed penalties. Based on this example, the department could consider two penalty notices issued in a two year period or three warning letters in a two year period. This would provide an extra deterrent to those who may purchase insurance to evade the penalty notice and then cancel it at some point afterwards.

We also require clarity as to the definition of a persistent offender, will the enforcement be against a particular VRM or against the registered keeper? This is of particular importance for our members as there could be circumstances where a vehicle has been on rent to several different customers all of whom had failed to notify the Motor Insurance Database of their insurance details and the vehicle could be seized whilst on rent to an innocent third party.

We cannot support a persistent offender definition unless our members are able to transfer fines as there is too high a risk of enforcement action against our members who would be penalised for the actions of their customers in not insuring the vehicle.



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### **Closing comments**

We welcome the opportunity to continue our construct dialogue and hope that we have effectively demonstrated the need for our members to be able to transfer fines to their customers where the customer has responsibility for insuring the vehicle.

You will note from the other fine regimes, this can be a closed transfer and does not in any way need to create loop holes for other businesses or individuals to take advantage of the ability to transfer the fine. We are not aware of this being exploited in any other fine regime.

**Summary of BVRLA Members legal right to transfer liability**

<b>Offence</b>	<b>Vehicle subject to a valid hire or lease agreement</b>	<b>Transfer of liability permitted?</b>	<b>Legislation, Case Law or Agreement</b>
<b>Parking Fine</b>	Yes	Yes	SI No. 3483 The Civil Enforcement of Parking Contraventions (England) General Regulations 2007
<b>Speeding Fine</b>	Yes	Yes	Road Traffic Act 1988
<b>Bus Lane Fine</b>	Yes	Yes	SI No. 2757 The Bus Lane Contraventions (Penalty Charges, Adjudication and Enforcement)(England) Regulations 2005
<b>Congestion Charge Fine</b>	Yes	Yes	SI No. 2285 Road User Charging (Charges and Penalty Charges) (London) Regulations 2001
<b>No Operator's Licence</b>	Yes	Yes	SI No. 3981 Goods Vehicles (Enforcement Powers) Regulations 2001
<b>Excise Fraud – Bootlegging</b>	Yes	Yes	Memorandum of Understanding in 1992
<b>Traffic Offences</b>	Yes	Yes	London Local Authorities and Transport for London Act 2003
<b>Driving without a valid driving licence</b>	Yes	Yes	Road Traffic Act 1988
<b>Driving without a valid motor insurance</b>	Yes	Yes	SI No. 1606 The Road Traffic Act 1988 (Retention and Disposal of Seized Motor Vehicles) Regulations 2005



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***Bona-fides***                    **BVRLA, the Industry and its Members**

- The BVRLA is the trade body for companies engaged in the leasing and rental of cars and commercial vehicles. Its Members provide short-term self-drive rental, leasing and fleet management services to corporate users and consumers. They operate a combined fleet of 2.6 million cars, vans and trucks, buying 44% of all new vehicles sold in the UK.
- Through its Members and their customers, the BVRLA represents the interests of more than two million business car drivers and the 10 million people who use a rental vehicle each year. As well as informing the Government and policy makers on key issues affecting the sector, the BVRLA regulates the industry through a mandatory code of conduct.