Motor insurance

P94 October 2014 edition

Update bulletin: November 2015

Please note the following updates to your October 2014 edition of the P94 study text.

This bulletin reflects the changes to the issue and surrender of insurance certificates as a result of the Deregulation Act 2015 which came into force on 30 June 2015.

Chapter 1

Please find below a revised and updated section D1E, Section 147 – Issue and surrender of certificates of insurance (and of security), pages 1/18–1/21.

D1E Section 147 – Issue of certificates of insurance (and of security)

This section, which is set out in full in the following paragraphs, is one of the key pieces of legislation affecting motor insurance. Along with s.148, s.151, s.152, s.153 and s.161, it has recently been subject to revision as a result of the implementation of the Deregulation Act 2015.

The Deregulation Act 2015
The Deregulation Act came into force on 30 June 2015. It forms part of the Government's red tape challenge announced in April 2011, by repealing or improving around 3,000 pieces of regulation. It follows on from the scrapping of the Road Fund Licence (car tax) disc and the photocard driving licence counterpart.

The relevant changes for motor insurance are detailed in Clause 9: Motor Insurers, which amends the regulations about the delivery and recovery of certificates of motor insurance as set out in the RTA and simplifies the cancellation process.

The key changes are:

1. The delivery of a certificate of insurance or security is still required but does not need to have taken place before the policy of insurance is legally effective.
2. If a motor policy is cancelled mid-term, the policyholder is no longer required to return the certificate of insurance or make a Statutory Declaration within 7 days. Failure to do so will no longer be a criminal offence.
3. The recovery of a certificate of insurance by the motor insurer following cancellation will no longer be necessary in order to avoid RTA liability in the event of a claim after the cancellation date.

Wording of s.147

(1) An insurer issuing a policy of insurance for the purposes of this Part of this Act must deliver to the person by whom the policy is effected a certificate (in this Part of this Act referred to as 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.

(1A) A certificate of insurance is to be treated for the purposes of subsection (1) as having been delivered to the person by whom the policy is effected if:

(a) it is transmitted electronically by the insurer to the person in accordance with subsection (1B) below; or

(b) it is made available by the insurer to the person on a website in accordance with subsection (1C) below.

(1B) A certificate is transmitted electronically by an insurer to a person in accordance with this subsection if:

(a) on effecting the policy to which the certificate relates, the person agreed to its electronic transmission for the purposes of subsection (1) above; and

(b) the certificate is transmitted by the insurer to an electronic address specified by the person for this purpose.

(1C) A certificate is made available by an insurer to a person on a website in accordance with this subsection if:

(a) on effecting the policy to which the certificate relates, the person agreed to its being made available on a website for the purposes of subsection (1) above;

(b) the insurer makes the certificate available to the person by placing an electronic copy of it on a website, and

(c) the person is notified by the insurer, in a manner agreed by the person, of:

(i) the certificate's presence on the website;

(ii) the address of the website;

(iii) the place on the website where he may access the certificate; and

(iv) how they may access the certificate.

(1D) Where a certificate made available on a website is treated by virtue of subsection (1A) (b) above as having been delivered by an insurer to a person, the insurer must ensure that the certificate remains continuously accessible to the person on the website until the expiry of the last day on which the policy to which it relates has effect.

(1E) For the purposes of subsection (1D) above, a certificate is to be treated as remaining continuously accessible to a person on a website, despite its being temporarily inaccessible to them on the website, if the insurer has taken all reasonable steps to make it continuously accessible to him on the website (including steps to remedy any temporary inaccessibility).

(2) A person giving a security for the purposes of this Part of this Act must deliver to the person to whom it is given a certificate (in this Part of this Act referred to as a 'certificate of security') in the prescribed form and containing such particulars of any conditions subject to which the security is issued and of any other matters as may be prescribed.

(3) Different forms and different particulars may be prescribed for the purposes of sub-section (1) or (2) above in relation to different cases or circumstances.

Reference has been made previously to the need for third party insurance to be evidenced by a Certificate of Motor Insurance. This document must be produced to the police as necessary to provide *prima facie* evidence that insurance against third party liabilities is in force.

This section provides that a certificate **in the prescribed form** must be delivered to the policyholder. However, delivery does not need to have taken place before the vehicle can be used on the road, provided the policy has been issued. Clause 9 of the Deregulation Act 2015 removed the requirement that a certificate must have been delivered before the policy was effective.

Prescribed form

It is important that the format of certificates is uniform to assist the authorities in inspecting them and establishing their validity. The rules are contained in the **Motor Vehicles (Third Party Risks) Regulations 1972** as amended, which is considered in more detail in chapter 4.

Delivery

In addition to physical transmission to the policyholder, delivery has been held to be effective if made to the policyholder's agent. The postal authorities are regarded as the agent of the receiver, so posting constitutes delivery for this purpose. An insurance broker or other insurance intermediary acting for the policyholder is also regarded as an agent for this purpose, provided the broker/intermediary has the policyholder's express authority to accept the certificate on their behalf. This authority is often included in the Terms of Business Agreements between the parties. If such express authority does not exist then delivery is not effective.

Surrender

Prior to the introduction of the Deregulation Act on 30 June 2015, if a policy was cancelled, the certificate had to be surrendered within seven days from cancellation taking effect and failure to do so by the policyholder constituted an offence. There is no longer any such requirement placed on the policyholder, regardless of the method by which the certificate had been delivered.

Electronically Issued Certificates

Changes to the RTA were introduced with effect from 30 April 2010, allowing the delivery of certificates by the insurer to the policyholder by electronic means. These were implemented by **The Motor Vehicles (Electronic Communication of Certificates of Insurance) Order 2010.** An explanation of the changes is given below. These changes should be read in conjunction with section D1J which deals with the attendant changes to s.152.

Section 1A	This enables insurers to issue certificates by electronic transmission (e.g. by attachment to an email or enabling the policyholder to access the certificate on its website).
Section 1B	The policyholder must agree to their receiving the certificate electronically and it must be delivered to the electronic address that the customer has requested.
Section 1C	The policyholder must agree to their receiving the certificate through a website, the insurer must place the certificate on the website and tell the customer where the certificate can be located and how to access it.
Section 1D	Where the certificate is made available on a website it must remain accessible to the policyholder until the expiry date of the policy.
Section 1E	This requires the insurer to take reasonable steps to ensure that the website remains accessible.

The new legislation applies in England, Scotland, Wales and Northern Ireland. Existing practice will apply for the Channel Isles and the Isle of Man, where only certificates in paper form may be issued and there is, in addition, a requirement for insurers to issue windscreen insurance discs.

The practicalities of the electronic issue of certificates is considered in the context of other electronic documents in chapter 4, along with the changes to the legislation governing the format of certificates.

It is important to remember that these are statutory requirements and do not affect the contract between insurer and insured. The insurer's obligation to indemnify in contract would be unaffected by a failure to issue and deliver a certificate, notwithstanding it might technically be a ground for criminal prosecution for driving/using an uninsured vehicle.

Please find below a revised and updated section D1J, Section 152 – Exceptions to s.151, pages 1/24–1/25

D1J Section 152 – Exceptions to s.151

Section 152 contains certain exemptions to insurers' liability under s.151.

Subsection 1a provides that:

> no sum is payable by an insurer unless the claimant has given notice of the bringing of proceedings either before they commence or within seven days of their commencement. Under subsection 1b the judgment does not have to be satisfied if there is an appeal pending

The claimant or their solicitor must give notice of the bringing of the proceedings either before they commence or within seven days of the issue of the summons or writ. There has been some debate on what constitutes 'notice'. In ***Harrington v. Link Motor Policies*** **(1989)** a letter from solicitors to insurers threatening proceedings if liability was not admitted or the claim met was held not to be sufficient notice. In ***Wake v. Page*** **(2000)** insurers were held not liable where no letter had been sent to them even though they were aware of the proceedings against them from their policyholder.

Subsection 1c exempts the insurer from liability if the policy had been cancelled before the event giving rise to the loss. As a result of the introduction of the Deregulation Act 2015, provided the correct cancellation process has been followed, the insurer's RTA liability ceases from the date of cancellation. There is no longer a requirement for the policyholder to surrender the certificate of insurance (or make a statutory declaration) nor for the insurer to commence criminal proceedings in the event that the policyholder fails to surrender the certificate (or make a statutory declaration).

It should be remembered that Subsection 1c applies only where the policy is cancelled. The position regarding voidance following material non-disclosure is considered below.

Subsection 2 provides that:

> no sum is payable by an insurer under section 151 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
>
> (a) that, apart from any provision contained in the policy or security, he is entitled to avoid it either under the Consumer Insurance (Disclosure and Representations) Act 2012 or, if that Act does not apply, 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
>
> (b) if he has avoided the policy or security under that Act or on that ground, that he was entitled so to do apart from any provision contained in the policy or security.

These subsections enable the insurer to exempt itself from the RTA liability to meet unsatisfied judgments if the insurance is void or voidable on the ground of misrepresentation or non-disclosure (you will be familiar with the subject of void and voidable contracts from your study of P05). To do so, the insurer must obtain a court declaration of its entitlement to avoid on that ground and commence proceedings to obtain the declaration before or within three months of the start of the proceedings that gave rise to the judgment under s.151.

Subsection 3 states that:

> an insurer which has obtained such a declaration in 2 above is not entitled to the benefit of that section unless before, or within seven days after, the commencement of that action he has given notice of it to the claimant in those proceedings specifying the non-disclosure or false representation on which he proposes to rely.

Subsection 4 states that:

> a person to whom notice of such action is given is entitled, if he thinks fit, to be made a party to it.

If the declaration has not been obtained by the time the claimant's proceedings have been started, the insurer must not only notify the policyholder but must give notice to the claimant either before or within seven days of the commencement of the declaration proceedings. This gives the claimant the opportunity to join the declaration proceedings and dispute the insurer's application should they see fit to do so.

As we shall see in chapter 2, the obtaining of such a declaration **after** an event giving rise to a RTA liability is of limited value, as the insurer retains a measure of responsibility under MIB Article 75. The cost of obtaining these can prove expensive, particularly where the application is disputed by one or more of the other parties. The advantages to the insurer of obtaining the declaration in this circumstance are discussed in chapter 2, section A2.

Please note that Appendix 1.1, Part VI of the Road Traffic Act 1988 (sections 143–158), pages 1/33-1/51 in your October 2014 edition of the study text, does not reflect the amendments made by this bulletin.

Please delete Appendix 1.2, Form of Statutory Declaration, page 1/52 and Appendix 1.3, Form of summons for failure to surrender certificate, page 1/53 and re-number subsequent appendix to 1.2.

Chapter 2

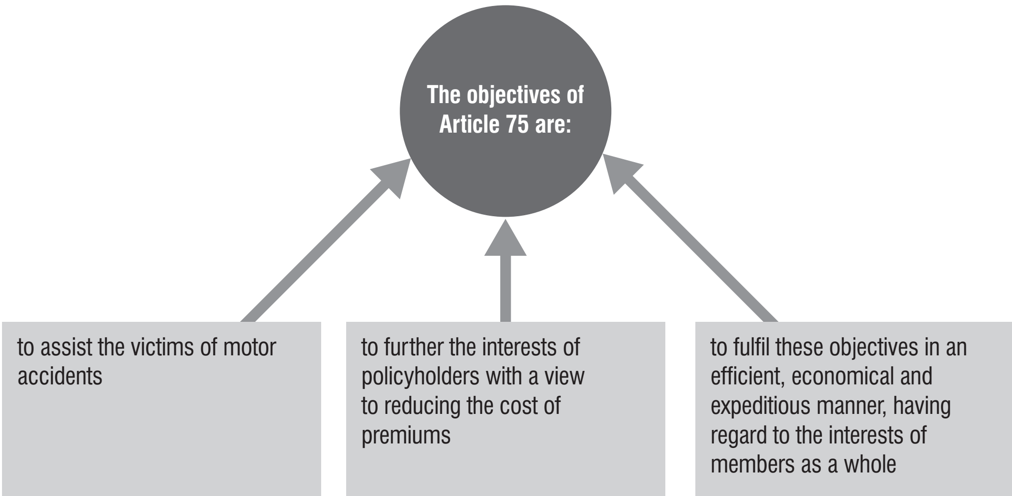
Please find below a revised and updated section A2,The Domestic Regulations (Article 75), pages 2/3–2/7.

A2 The Domestic Regulations (Article 75)

Included in MIB's rules is an agreement between it and its members, known as the Domestic Regulations. These appear in article number 75 of MIB's Memorandum and Articles of Association, and the liability insurers incur under it is, consequently, referred to as an 'Article 75' liability. The agreement has the effect of requiring insurers to meet certain liabilities which arise from the use of a vehicle where there is evidence of insurance being provided by the insurer in the broadest sense, whilst outside their strict contractual or RTA liabilities.

An example is the situation mentioned above, where an insurer has successfully obtained a declaration of its right to avoid under the RTA s.152. The insurer has no contractual liability as the policy is void, nor does it have an RTA liability as it has obtained the declaration, but it nevertheless remains liable under Article 75 in a situation where the declaration was obtained after the accident in question (see item (i) below).

The vehicle in question is uninsured for RTA purposes and remains so for the purpose of Article 75. The insurer's liability is limited to the constraints of the Uninsured Drivers Agreement and the attendant limitations on insurer's liability (e.g. subrogated claims are excluded), but the claim is met by the insurer without recourse to the MIB's central fund. Put another way, the insurer is required by the Articles to handle and pay the particular uninsured case on behalf of MIB. Consequently, it is reflected in the insurer's results in the same way as a claim under a valid policy or a claim settled as RTA insurer.



Article 75 is applied and interpreted in a pragmatic, rather than a strictly legal manner with a view to furthering these objectives. In the event of dispute between MIB and a member, it is interpreted impartially by a Technical Committee comprising MIB members, although there is a facility for cases to go to arbitration as a mechanism for appeal against the decisions of the Technical Committee.

The broad scope of Article 75 is summarised below by way of paraphrased extracts from the Agreement.

Activity

Visit the MIB website www.mib.org.uk and copy the Domestic Regulations (Article 75) from the MIB Memorandum and Articles. You will also find the text of the Uninsured Drivers, Untraced Drivers and Supplementary Agreements on the website.

The Article 75 insurer is an insurer who at the time of the accident giving rise to the liability was providing any insurance in respect of the vehicle (other than by reason of a driving other vehicle clause)...from which the liability arose.

> …'insurance' shall mean the issue of any document or promise by or on behalf of a Member, whether legally or otherwise, purporting to effect cover against Road Traffic Act Liability, whether or not a certificate of insurance has been prepared, issued or delivered (and notwithstanding that the certificate of insurance, if any, may be void or voidable) and includes the issue of a security under the Road Traffic Act 1988 or any subsequent statute or equivalent legislation in the Relevant Territories or a relevant foreign country. Where, after 1 January 2002, a record is held on the MID, the existence of such a record covering the date of an accident shall, unless there is documentary evidence to the contrary, be sufficient to establish the existence of 'insurance' for the purpose of this Article;

Note that the insurer can be on risk as an Article 75 insurer even if an RTA certificate of insurance has not been issued. Furthermore, a record on the Motor Insurance Database that the vehicle is insured by a particular insurer is treated as prima facie proof for the purposes of Article 75. Article 75 liability attaches only for specifically insured vehicles; it does not apply to vehicles purported to be covered by a 'driving other vehicles' section of a policy.

The agreement states that the insurer is the Article 75 insurer notwithstanding that:

(i) the insurance has been obtained by fraud, misrepresentation, non-disclosure of material facts, or mistake;

This obligation dovetails with the RTA exemptions explained in chapter 1, sections D1I and D1J. Mention was made earlier of the limited advantages to an insurer of obtaining a court declaration of its entitlement to avoid and thereby absolve itself of RTA liability. Here we see that such action merely converts the RTA liability to Article 75 liability and the option of avoiding and obtaining a supporting court declaration is, therefore, rarely exercised. It is likely to be utilised where liability for an incident involves more than one vehicle and there are two or more insurers involved because, if there is a meaningful degree of liability on another party who is properly insured or whose insurers have a RTA liability, then the Article 75 insurer can escape liability completely. This is known as the joint tortfeasor rule (i.e. there is more than one defendant).

The other main advantage is that the Article 75 insurer has no liability for subrogated claims; thus the insurer of an innocent motorist which has indemnified its policyholder for an accidental damage claim would, for example, be unable to effect recovery of its outlay from the Article 75 insurer of the responsible party.

(ii) the cover has been back dated; or…

Obligation (ii) effectively places the insurer on risk as Article 75 insurer, if a member of staff (or intermediary acting for the insurer) backdates cover. This means the insurer incurs liability for an incident which actually precedes the commencement of RTA liability.

(iii) the use of the vehicle is other than that permitted under the policy.

Item (iii) provides for the scenario described in chapter 1, section D1J, whereby the Article 75 insurer meets the 'RTA' liability averted by virtue of the purpose of use falling outside the policy scope.

And only ceases to be the Article 75 insurer:

(i) if a renewal notice is issued, incorporating a temporary cover note extending cover, conditionally or otherwise, beyond the date of expiry of the policy, as of the expiry date of that extension of cover;

(ii) from the expiry date specified in the policy if, by provision in the policy or by notice in writing by either party to the policy, the policy is not intended to be renewed;

Item (i) provides that the Article 75 liability ceases upon expiry of the temporary covering note incorporated in the insurer's renewal notice, where such a covering note is included. Item (ii) means that the Article 75 liability will cease upon the natural expiry of the policy if the policy makes provision for it, or there is written notice by the insurer or the policyholder of the intention not to renew.

(iii) when the policy has been cancelled by mutual consent or by virtue of any provision contained in it before the date on which the Road Traffic Act liability was incurred and in addition before that date, either:

1. in respect of policies cancelled on or after 30 June 2015: any record on the MID for the policy in question has been updated to show that policy has been cancelled;

   For this purpose, any update of the MID record must be in accordance with the guidance issued by MIB from time to time; or

2. in respect of policies cancelled before 30 June 2015: one of the following has occurred, namely:

   (a) the certificate of insurance has been surrendered to the insurer by the policyholder, or (in the case of a certificate which is not in electronic form) the policyholder has made a Statutory Declaration stating that the certificate has been lost or destroyed, or

   (b) the insurer has commenced proceedings under the Road Traffic Act 1988 in respect of the failure to surrender the certificate.

   For the purpose of (a) or (b), the references to 'surrender', 'surrendered' and 'Statutory Declaration' bear the same meaning as under the Road Traffic Act 1988 and for the purpose of (iii) 'cancelled' means; cancellation, by specific request of the insured, or strictly in accordance with the power of cancellation contained in the Member's contract for the risk, notwithstanding that such contract may not have been issued (provided that where an intermediary cancels the policy and the certificate of insurance has been surrendered to the intermediary, either as agent for the Member or under the terms of any separate agreement between the intermediary and the insured, cancellation of the policy must be exercised strictly in accordance with the Member's standard form of contract for the risk and there must be clear evidence that the intermediary is empowered to do so by the policy wording);

Item (iii) sets out the position following cancellation of the policy both after the implementation of the Deregulation Act 2015 on 30 June 2015 and prior to it taking effect. The current 2015 MIB Memorandum and Articles of Association wording was adopted from the same date in order to reflect the changes made to the RTA 1988 by the Deregulation Act.

The post-implementation position is that, provided the correct contractual process has been strictly followed, the insurer's Article 75 liability ends at the point when the MID record is updated to show the policy to be cancelled. Consequently, under the RTA 1988, an insurer is relieved of RTA liability from when the policy is cancelled and, under Article 75, only retains Article 75 liability until the MID is updated, usually within 24 hours of policy cancellation. Whether or not the certificate has been recovered is irrelevant.

Prior to the Deregulation Act, the insurer was not relieved of Article 75 liability unless, upon cancellation, the certificate of insurance was surrendered in accordance with the requirements of s.147 of the RTA which applied prior to 30 June 2015 (or a Statutory Declaration of loss had been made in lieu of its surrender) or the insurer commenced criminal proceedings in respect of the failure to surrender in a timely fashion.

Note that neither RTA s.152 nor Article 75 allows the insurer to escape liability if the accident precedes the effective date of cancellation.

The clause goes on to articulate the situation where the policy provides for an intermediary to cancel the policy on behalf of the insurer (and, for policies cancelled prior to 30 June 2015, the certificate is surrendered to the intermediary) either as agent for the insurer or under the terms of an agreement between the intermediary and the policyholder.

(iv) when, before the date on which the Road Traffic Act Liability was incurred, the Member has obtained a declaration from a court of competent jurisdiction that the insurance is void or unenforceable;

This item offers exemption from Article 75 liability where a court declaration that a policy is void is obtained *before* the date of accident. It, therefore, differs from the declaration of the right to avoid under the RTA (see chapter 1, section D1J), which is retroactive, and it does not limit avoidance to the grounds of misrepresentation or non-disclosure.

(v) when the insurance has ceased to operate by reason of a transfer of interest in the vehicle involved in the accident, which the insurance purports to cover, and which transfer is proved by evidence;

This clause reflects the established legal view that the motor policyholder's insurable interest in the specifically insured vehicle ceases upon sale or disposal of it and, in cases where the policy provides no other benefits, such as the 'Driving other vehicles' extension, the policy itself comes to an end.

Note the requirement to provide evidence of the transfer of interest. The importance of this is reflected in the practice of some insurers to sometimes seek details of the purchaser of a vehicle before agreeing to delete a vehicle from cover when substituting to another, in cases where the certificate of insurance has not been recovered (prior to 30 June 2015).

(vi) when the theft of the certificate of insurance was reported to the police (provided that the report was made within 30 days of the date of discovery of the theft); or

(vii) if the certificate of insurance has been forged by someone other than the Member or an intermediary acting on behalf of the Member or an officer, employee or agent of the Member or of an intermediary acting on behalf of the Member.

Item (vi) exempts the insurer if certificates are stolen, provided a timely report is made to the police. This enables the police to be on the alert when inspecting suspect documents and is a useful aid to their investigations where a vehicle is thought to be uninsured. Item (vii) provides relief if the certificate is forged – a fairly common occurrence, even before the advent of home laser printers and scanners.

In all cases where a Member contends that it is not the Article 75 insurer, for whatever reason, the burden of proof, on the balance of probabilities, rests with the Member.

Article 75 thereby provides a further layer of responsibility beyond the strict RTA liability, whereby the liability is met by the insurer as opposed to the MIB Central Fund. In summary, an insurer's liability can arise thus:

- Contractual insurer under a valid policy.
- RTA insurer under an invalid policy but in circumstances where the insurer retains a RTA liability.
- MIB Article 75 insurer, whereby the insurer incurs a MIB liability, in line with the Uninsured Drivers Agreement.

If the liability is not met by an insurer under any of the above it falls to be dealt with by the MIB Central Fund.

Contractual insurer	RTA insurer	MIB Uninsured Drivers' Agreement (Article 75 insurer)	MIB Uninsured Drivers' Agreement (Central Fund)
The policy is valid and the policyholder/driver is entitled to an indemnity for the RTA liability. Insurer pays claim from its own fund.	The policy is inoperative by, for example, a breach of policy condition and the policyholder/driver is not entitled to an indemnity. The insurer is obliged to meet any unsatisfied judgment with a right of recovery against the policyholder/driver. Insurer pays claim from its own funds.	The policy is inoperative and the insurer has no RTA liability by virtue of its having terminated cover or avoided the policy, in accordance with RTA requirements but, nevertheless, remains liable as 'Article 75 insurer'. Insurer pays claim from its own funds.	There is no Article 75 insurer. The Central Fund meets the uninsured liability under the Uninsured Drivers Agreement. All motor insurers share cost of claim via their contributions to the levy.

Question 2.1

There are two agreements between the MIB and the Government in respect of innocent victims' claims where there is no valid insurance on which to claim. What are these?

Please find below a revised and updated section A2A, The impact of Article 75 on the insurer, page 2/7.

A2A The impact of Article 75 on the insurer

It is clear that the requirements of Article 75 impose quite onerous obligations on insurers and it undoubtedly acts as a great incentive to employ 'good housekeeping' to ensure as far as possible that they do not incur direct liability.

Among the incentives to insurers evident from the requirements above are:

- prudent risk selection and validation (obligation i);
- close agency control and cover note auditing (obligation ii and exemption iii);
- strict controls and procedures for notifying termination of cover thereby helping curtail unintentional uninsured driving (exemptions iii and iv); and
- notifying stolen certificates (exemption vi).

The process whereby an insurer determines its liability as RTA insurer, Article 75 insurer or whether MIB will meet the liability under the Uninsured Drivers Agreement can be complex. This is examined in more detail in chapter 8.

Please replace the final bullet point in key points, page 2/14, The Motor Insurers Bureau with the following text:

- Among the incentives are to employ:
  - Prudent risk selection (and validation) to prevent voidable policies being issued.
  - Close agency control and cover note/process auditing to help prevent back dating of cover and achieve efficient procedures by intermediaries when acting for the insurer.
  - Strict controls and procedures for notifying termination of cover thereby helping curtail both unintentional and intentional uninsured driving.
  - Notification of stolen certificates to the police in a timely fashion to assist enforcement of the RTA insurance requirement.

Please replace the answer to 2.2 a) i) of question answers, page 2/15 with the following:

i) RTA Insurer – examples:

- Where the driver is not a named driver.
- Where the driver is not a licensed driver.

Chapter 3

Please find below a revised and updated section B15D, Cancellation, page 3/24.

B15D Cancellation

8a) You may cancel this policy within 14 days of the date you receive it or within 14 days of any subsequent renewal date. If you choose to do this you are entitled to a refund of the premium you have paid for this insurance less a pro rata charge for the number of days for which cover has been given. The full premium is due if a claim has been made which entails settlement on the basis of a total loss of your car.

This 'cooling off' period is applicable to all general insurance contracts issued to consumers and was introduced to comply with FCA rules established following the **Consumer Protection (Distance Selling) Regulations 2000**.

8b) We may cancel this policy, where there is a valid reason for doing so, by sending you seven days notice in writing (by recorded delivery) to your last known address setting out the reason for cancellation. Wherever possible you will be given the opportunity to provide an acceptable solution before notice of cancellation is issued. Valid reasons for cancellation include, but are not restricted to:

- Non-payment of premiums, or non-payment of any outstanding amount due under a credit agreement with us, to finance the premium or part of it, where we have contacted you to request payment by a specific date.

- Serious failure to comply with Policy Conditions.
- Failure to provide information or documentation requested by us, or failure to provide a satisfactory response to any reasonable request for assistance in administering the policy or dealing with any claim.
- Violent, aggressive, abusive or threatening behaviour towards our staff, suppliers or representatives appointed by us.

If we do this you will be entitled to a refund of the premium you have paid for this insurance less a pro rata charge for the number of days for which cover has been given.

This enables the insurer to invoke cancellation during the term of the policy, provided they have a valid reason for doing so. It is customary to give seven days' notice of cancellation but this can be varied. Some policies stipulate that the notification will be sent by recorded delivery or registered post but this is not universal, nor is it mandatory.

The notice brings the contract to an end for all purposes but you will recall that termination of the insurer's Article 75 liability is only achieved once the MID record has been updated.

As the cancellation is at the instigation of the insurer a pro-rata refund is allowed, irrespective of whether there has been a claim during the period of insurance.

Some policies provide that cancellation may be invoked on its behalf by its authorised agent.

8c) If you wish to cancel your policy outside the statutory cooling off period in 8a above you can write to us and we will cancel your policy from the date we receive your request or a later date specified by you. If you or others have not made a claim in the current insurance year, we will refund any premium paid less a charge for the period for which cover has been given calculated in accordance with our published short period scale. If a claim has been reported in the current insurance year no refund will be given.

This provides the policyholder with the option of cancelling for any reason and is complementary to the insurer's right to do so. It is, however, usual for the insurer to apply 'short period' rates (i.e. greater than pro-rata) or a fixed cancellation fee for first year cancellations to cover the expense of issuing the policy. Some insurers, nevertheless, allow pro-rata refunds for cancellations in second and subsequent years; in both these instances the refund is dependent upon there being no claim under the policy during the current period but practice varies in this regard. If, following a claim, a full recovery of its outlay was made, the insurer would normally disregard it for this purpose and some insurers similarly disregard windscreen claims, though this is not universal.

Chapter 4

Please note the following amendment to Learning objectives, page 4/1

Replace bullet point 5 with the following text:

- discuss the legal issues arising from the delivery of certificates of insurance and documentation issued via intermediaries; and

Please find below a revised and updated section A4, The policy documentation, page 4/3

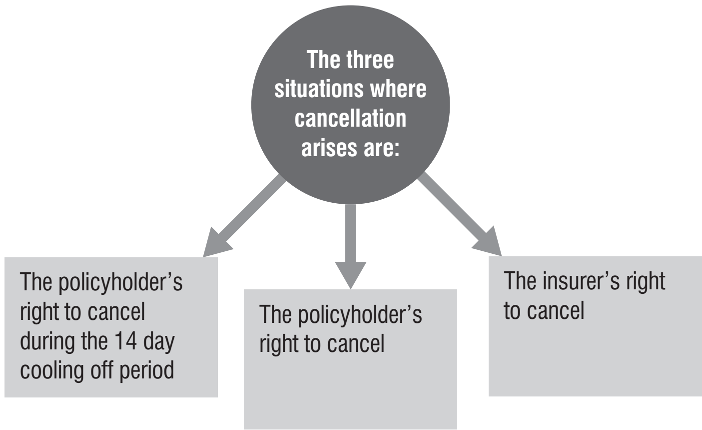
A4 The policy documentation

You will be familiar with the policy document, schedule and endorsements from your study of chapter 3 and aware that a certificate of insurance must be delivered to the proposer (or their authorised agent), although it is no longer a legal requirement for delivery to have taken place before the vehicle can be used – refer to chapter 1, section D1E.

At one time it was a regulatory requirement for insurers to issue a policy summary or 'key facts' document with the policy documents, and whilst this is no longer mandatory some insurers still follow this practice.

Please find below a revised and updated section B3, Cancellation, pages 4/9–4/10.

B3 Cancellation



The conditions applicable to each of these vary and these are explained in chapter 3, section B15D.

You will recall from chapter 3, section B15D that insurers commonly charge 'short period' rates for first year cancellations to recognise the cost of acquiring and issuing the policy, whereas some apply short period rates to cancellations in renewed years. These are derived from scales which feature percentages, as shown in the example below. Here, the insurer would charge one fifth of the annual premium instead of the pro-rata one twelfth.

Table 4.1: Short period rates

Period not exceeding	% premium due	Period not exceeding	% premium due
One month	20%	Five months	60%
Two months	30%	Six months	70%
Three months	40%	Seven months	80%
Four months	50%	Eight months	90%
Over eight months full premium applies			

As an alternative to the short period scale, some insurers apply a flat fee in addition to the pro-rata charge for first year cancellations.

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Question 4.3

What justification do you think there is for insurers to charge short period rates for some types of cancellations?

The prompt updating of the insurer's record is important as failure to display the fact that cover has expired could mislead the viewer of the record. It is also important that the MID is updated promptly to reflect the expiry as it is at this point that the insurer's liability ceases as explained in chapter 2, section A2 and best practice guidelines exist to which insurers are expected to adhere. Detailed knowledge of these guidelines is not required for this course but it should be noted that where cancellation has been invoked because of default of installment premium, the date of termination for MID purposes will be the date upon which the policy cancellation notice took effect (i.e. upon expiry of the cancellation notice), not backdated to the final date for which cover was paid up, as the insurer's potential RTA liability could continue until the expiry of the cancellation notice.

Furthermore, where a policy is avoided (see section C2) the effective date of cover ceasing for the purpose of MID is the date on which the policy is formally declared void, not the retroactive date of avoidance (e.g. inception). In this case, the insurer similarly has a potential RTA liability and it is important that the MID does not mislead enquirers. It should be remembered that the presence of a record on the MID does not automatically prove an insurer was on cover at that time and, therefore, potentially liable for a claim. It is, however, the starting point for further enquiries of the insurer.

Instructions from the policyholder to cancel mid-term are commonly given verbally (e.g. by telephone) and where this is so it is best practice for the insurer (or intermediary) to issue confirmation to the policyholder, rather than waiting for the policyholder to confirm their instruction in writing, although confirmation should still be sought where this is required by the policy.

Acceptance of verbal instructions by telephone to cancel is open to possible mischief (or even fraud) by persons misrepresenting themselves as the policyholder and FCA rules require insurers and intermediaries to have checks in place to ensure that changes notified by telephone are indeed made by the policyholder. The above practice of issuing a confirmatory letter would alert the genuine policyholder to the misrepresentation.

Please find below a revised and updated section B4, Suspension, pages 4/10 – 4/11

B4 Suspension

Most motor car policies provide for cover to be suspended if the vehicle is 'laid up' (i.e. taken off the road) and, provided the period of suspension is not less than four consecutive weeks and it is not as a result of damage sustained in an incident which is the subject of a claim under the policy, a credit is allowed calculated pro-rata for the period of suspension.

Where cover is other than third party only it is usual to continue to provide accidental damage, fire and theft cover (as appropriate to the underlying policy cover) during the period of suspension, as these risks, unlike the third party road risk, remain whilst the car is off the road. Where this applies the credit is calculated as a proportion of the pro rata calculation, to make allowance for the remaining risk to which the insurer is exposed. A typical credit would be 75% of the pro-rata amount, where only fire and theft cover remains in force. Historically, the suspension credit was deducted from the forthcoming renewal premium or held to credit against future business but it is practice nowadays to allow it as a refund at the point that the full cover is reinstated or at expiry of the policy, whichever is first. As RTA cover is suspended, the registered keeper will need to make a SORN (Statutory Off Road Notification) and the MID will be updated to reflect that the policy is inoperative for RTA purposes during the period of suspension.

It was considered theoretically incorrect to 'suspend' a policy when a vehicle is disposed of, as the subject matter of the policy had ceased to exist and the policy had, therefore, automatically come to an end. It is, however, common for a motorist to be without a vehicle for a short time whilst seeking a replacement, and insurers have tended to allow total suspension for a limited period to facilitate this, rather than go to the expense of cancelling and then issuing a fresh contract, which might also be disadvantageous to the policyholder whose 'no claim' discount is in the course of accrual and would be curtailed by the alternative of cancelling and issuing a new policy when the replacement vehicle is acquired. This previous objection might in any event now be overcome by the decision in ***Dodson v. Dodson*** **(2001)** (see chapter 3, section B4).

Please find below a revised and updated section C, Other mid-term activity, page 4/11

C Other mid-term activity

In addition to mid-term variations to the policy and the updating of other changes in circumstances, there is scope for substantial other mid-term activities for which processes are necessary.

Please find below a revised and updated section C3, Witness statements, page 4/15

C3 Witness statements

Mention was made in chapter 2 of the volume of police enquiries received by UKIC arising from their use of the MID in regard to suspected uninsured driving offences. Insurers, too, receive enquiries, either via UKIC or direct from the police, and are required to provide evidence for use in criminal proceedings, arising from breaches of insurance-related legislation. This requirement can ultimately be enforced by subpoena, and compliance is, therefore, effectively mandatory. Evidence is typically provided by way of a written witness statement and, where necessary, by providing verbal evidence in court.

You will recall that most insurance-related prosecutions arising from road traffic offences fall under one or both of two headings and you will be aware of the detail of these from chapter 1. These are:

1. Making a false statement or withholding material information (s.174 of the RTA).
2. Using, or permitting the use of, an uninsured motor vehicle (s.143 of the RTA).

Others might involve prosecutions for fraud or forgery.

Requests for written statements are normally received from the police authority dealing with the alleged offence, by way of telephone enquiry followed by letter/fax; alternatively, the handling authority might request the police authority local to the insurer's office to call at the insurer's premises to take the statement, though this practice is nowadays less common than it used to be.

The handling officer will, naturally, be aware of the alleged offences and have a good idea of the nature of the evidence required to enable a case for prosecution to be prepared. Most police officers are not, however, expert in insurance matters, nor are they the judges of whether an offence has been committed; similarly, insurers are not qualified to state whether or not an offence has been committed.

These are ultimately matters for the court to decide.

It follows that great care must be taken in the compilation of statements and it should always be borne in mind that the witness could ultimately be required to justify their statement under cross-examination in a court hearing. It is particularly important to limit the statement to one of fact, not opinion.

In regard to s.174 offences, where a conventional proposal form was used for a proposal, a copy of it would be produced as an exhibit – for telesales, the Statement of Facts and call script; for internet business, the statement of facts and screen prints. Care must be taken when assessing the relevance to acceptance of the risk of accidents/losses and convictions and, in regard to the latter, whether a conviction was disclosable, having regard to the provisions of the **Rehabilitation of Offenders Act 1974**, discussed in chapter 5.

It should be remembered that, whilst a misrepresentation/non-disclosure of material fact might constitute an offence under s.174, it would not ordinarily support a prosecution under s.143. Refer to chapter 2, section B1. You will also recall that a driving limitation based on age of the driver would not support a 'no insurance' prosecution as it is prohibited under s.148, whereas an excluded driver by name or one not included under a named driver or insured only driving policy would normally be liable to prosecution (refer to chapter 2, section B).

Please find below a revised and updated section D1D, Payment of premium, page 4/17

D1D Payment of premium

The renewal notice should make it clear that cover ceases on the date of expiry of the current insurance year and that the policyholder should ensure that the premium is paid and received by the insurer on or before that date if continuous cover is to be maintained.

An insurer is under no obligation to accept the premium if not paid in good time, but it is always open to it to waive that right for contractual purposes and for some forms of (non-motor) insurance a period of grace (typically 15 days) is sometimes allowed, during which time the premium may be paid to achieve renewal without a break in cover.

This is not possible for the RTA element of motor policies for, as we have seen, insurers are precluded from ante-dating certificates, even where the non-issue was due to the insurer's failure to issue a certificate in good time. In addition, insurers have a limited period of time in which to send updated records to the MID. Days of grace, consequently, do not feature for motor renewals.

Please find below a revised and updated section D1J, Lapsing, page 4/18

D1J Lapsing

If renewal is not taken up by the policyholder, the policy automatically lapses and the insurer makes an appropriate 'credit' adjustment to accounting records to cancel out the 'debit' created when the renewal record was established.

In those cases where renewal is invited via an intermediary it is necessary for the renewal papers to be returned to the insurer. Removal of the 'debit' from the intermediary's account with the insurer is usually dependent upon compliance with this activity.

As with cancelled and avoided policies, it is important that the insurer's record does not mislead enquirers and those accessing the record. If the renewal invitation is not taken up the insurer should promptly update its record and the MID to show that the policy has expired.

Please find below a revised and updated section E2, Delivery of certificates of insurance, page 4/19

E2 Delivery of certificates of insurance

In chapter 1 we examined the requirement of the RTA, whereby a certificate of insurance must be delivered by the insurer to the policyholder. Physical delivery is necessary but posting constitutes delivery as the postal authorities are regarded as agent of the receiver.

Insurance intermediaries are also regarded as agents of the policyholder for this purpose, provided they have express authority to accept certificates on the policyholder's behalf. Such authority is often included in the Terms of Business Agreements between the parties. The agent's authority in this regard was examined in ***Starkey v. Hall* (1936)**. In this case the policy documents (including certificate) were held by a finance company to which the premium was being paid in instalments and which would not release them to the policyholder until the instalments were complete. It was held that there was no delivery in this case. Significantly, the finance company was not under a duty to hand the certificate over to the policyholder at their request, whereas an agent authorised by the policyholder would be required to do so.

Please find below a revised and updated section F1, Electronically issued documents, pages 4/19–4/20

F1 Electronically issued documents

Traditionally, insurance documents have been produced in paper form and until fairly recently have been sent exclusively by conventional post. This remains the principal means of delivery between insurer (or intermediary) and the policyholder, but increasingly greater use of electronic delivery is being introduced as more customers have access to robust home personal computers and printers.

Policy documents sent electronically offer a speedier means of delivery and reduce postage costs to the mutual benefit of insurers and their customers.

Electronic delivery is achieved typically by an attachment to e-mail or by allowing the policyholder access to a portal within the insurer's website. This enables the policyholder not only to access and take copies of policy documentation but to make certain changes to the policy online.

As explained in chapter 1 section D1E, changes to the RTA were introduced with effect from 30 April 2010, allowing the delivery of certificates of motor insurance by electronic means, although both electronic and conventional posted documents will continue in parallel for the foreseeable future.

The new legislation also provides for the electronic notification of cancellation of policies for which a certificate in electronic form has been issued, and includes the additional facility whereby a certificate issued in paper form may be surrendered electronically. Furthermore, a policyholder may make an electronic declaration where a paper certificate is lost or destroyed instead of making a statutory declaration, but a statutory declaration is still necessary for paper certificates if an electronic declaration is not made. There is no legally prescribed format for the electronically transmitted statements of cancellation and loss or destruction and it is for insurers to specify their own requirements to policyholders in this regard.