



Uninsured Drivers Agreement - Gibraltar

THIS AGREEMENT is made on the 26 day of March 2021 between **HM GOVERNMENT OF GIBRALTAR (HMGOG)** of 6 Convent Place Gibraltar GX11 1AA and the **MOTOR INSURERS' BUREAU (MIB)** of Linford Wood House, 6-12 Capital Drive, Linford Wood, Milton Keynes, MK14 6XT.

IT IS HEREBY AGREED AS FOLLOWS:-

Interpretation and definitions

1. (1) Unless this Agreement provides otherwise, the Interpretation and General Clauses Act (1962-08) applies to the interpretation of an Act of the Gibraltar Parliament and the Interpretation Act 1978 applies to the interpretation of an Act of the United Kingdom Parliament.

(2) A reference in this Agreement (however framed) to the doing of an act by, or the happening of an event in relation to, a claimant includes reference to that act or event in relation to a solicitor or other person acting on the claimant's behalf.

(3) A requirement to give notice, or provide documents, to MIB in this Agreement may be satisfied by giving such notice or providing such documents to a solicitor acting on MIB's behalf and MIB may perform its obligations under this Agreement by agents.

(4) In this Agreement, unless the context requires otherwise, the following expressions have the following meanings -

"claimant" means a person who has commenced or who proposes to commence relevant proceedings and has made an application under this Agreement in that respect;

"contract of insurance" means a policy of insurance or a security covering a relevant liability;

"Crown" means the Crown in right of Gibraltar;

"insurer" includes the giver of a security;

"MIB's obligation" means the obligation contained in clause 3;

"property" means any property whether real or personal;

"relevant liability" means a liability in respect of which a contract of insurance must be in force to comply with the 1986 Act and, for the purposes of this Agreement, that obligation is deemed to extend to a liability arising from the use of a trailer as a vehicle, where "trailer" has the meaning given in section 2 of the Traffic Act 2005;

"relevant proceedings" means proceedings in respect of a relevant liability;



“relevant sum” means a sum payable under an unsatisfied judgment, including interest and costs (but only the interest and costs in the same proportion as the relevant liability bears to the total sum awarded under the judgment);

“the 1986 Act” means the Insurance (Motor Vehicles) (Third Party Risk) Act, 1986 (as amended);

“unsatisfied judgment” means a judgment or order (by whatever name called) in respect of a relevant liability which has not been satisfied in full within seven days from the date upon which the claimant became entitled to enforce it.

PRINCIPAL TERMS

Duration of Agreement

2. (1) Subject to clauses 6(3)(ii) and 10(2), this Agreement comes into force on 26 March 2021 in relation to accidents occurring on or after that date.
- (2) The Agreement made on 3 May 2001 between HMGOG and MIB, as amended by the Supplementary Agreement made between the same parties dated 19 November 2018, continues in force in relation to accidents occurring on or after 25 July 2001 but before 26 March 2021.
- (3) This Agreement may be terminated by HMGOG or by MIB giving to the other not less than twelve months’ notice in writing but without prejudice to its continued operation in respect of accidents occurring before the date of termination.

MIB’s obligation to satisfy claims

3. (1) Subject to the exceptions, limitation and preconditions set out in this Agreement, if a claimant has obtained an unsatisfied judgment against any person in a Court in Gibraltar, then MIB will pay the relevant sum to the claimant or will cause the same to be so paid.
- (2) Paragraph (1) applies whether or not the person liable to satisfy the judgment is in fact covered by a contract of insurance and whatever may be the cause of that person’s failure to satisfy the judgment.

Exceptions to MIB’s obligation

Crown vehicles

4. (1) MIB is not liable for any claim, or any part of a claim, where liability is incurred by the user of a vehicle owned by or in the possession of the Crown unless:
 - (a) the vehicle is in fact covered by a contract of insurance; or

(b) some other person is responsible for maintaining a contract of insurance for the vehicle in question.

(2) For the purposes of this clause a vehicle which has been unlawfully removed from the possession of the Crown is deemed to continue in the Crown's possession nevertheless.

Other vehicles exempt from the insurance obligation

5. MIB is not liable for any claim, or any part of a claim, arising out of the use of a vehicle which is not required to be covered by a contract of insurance by virtue of section 3(4) of the 1986 Act, unless the use is in fact covered by a contract of insurance.

Other sources of recovery

6. (1) Subject to paragraph (2), MIB is not liable for any claim, or any part of a claim, in respect of which the claimant has received, or is entitled to receive or demand, payment or indemnity from any other person (including an insurer), not being a claims officer or assisting authority under any criminal injuries compensation scheme in force in Gibraltar pursuant to EU Directive 2004/80 or its equivalent.

(2) Paragraph (1) does not apply -

(a) where the claim is for sums to meet the claimant's liability to reimburse an employer provided the employer is not insured for that loss, or;

(b) in respect of the claimant's legal costs.

(3) An entitlement to receive or demand, payment or indemnity in paragraph 1 extends to where the insurer, under a contract of insurance or any other insurance, regardless of the commencement date of such insurance, does not make the payment or provide the indemnity because

(i) the claimant:

(a) has not made or does not make a claim under that insurance;

(b) has made or does make a claim under that insurance but not within its stipulated timeframe; or

(c) has incurred a liability to any other person where that liability could have been avoided by making a claim under and in accordance with the provisions of that insurance, or because

(ii) any liability of the insurer (whether through contract, statutorily or otherwise) cannot be met by the insurer due to it having insufficient funds or it being in insolvency and this subparagraph (ii) applies to a claim which arises from an accident occurring either before or after the date referred to in clause 2(1) provided that the insufficiency of funds or insolvency arises on or after that date.

Vehicle damage

7. (1) MIB is not liable for any claim, or any part of a claim, in respect of damage to a motor vehicle, or losses arising therefrom, where at the time when the damage to it was sustained -
- (a) there was no contract of insurance in force in relation to that use of the vehicle; and
 - (b) the claimant either knew or had reason to believe that that was the case.
- (2) For the purposes of paragraph 7(1)(b) –
- (a) in the case of a claim brought by the dependants or estate of a deceased person, it is the state of knowledge of the deceased which is determinative for the purpose of determining a claimant’s state of knowledge where “dependant” has the same meaning as the term “dependant” in section 6(7) of the Contract and Tort Act 1960 (as amended): and
 - (b) knowledge which the claimant had, or had reason to have, includes knowledge of matters which the claimant could reasonably be expected to have been aware of had the claimant not been under the self-induced influence of drink or drugs.

Passenger claims

8. (1) Subject to paragraph (2), MIB is not liable for any claim, or any part of a claim, in respect of a relevant liability by a claimant who, at the time of the use giving rise to that liability, was voluntarily allowing himself to be a passenger in the vehicle and, either before the start of the claimant’s journey in the vehicle or after its start if the claimant could reasonably be expected to have alighted from it, knew or had reason to believe that -
- (a) the vehicle had been stolen or unlawfully taken;
 - (b) the vehicle was being used without there being in force in relation to its use a contract of insurance complying with the requirements of section 4 of the 1986 Act;
 - (c) the vehicle was being used in the course or furtherance of a crime; or
 - (d) the vehicle was being used as a means of escape from, or avoidance of, lawful apprehension.



(2) Paragraph (1) only applies where the relevant liability is incurred by the owner or registered keeper or a person using the vehicle in which the claimant was a passenger.

(3) The burden of proving that the claimant knew or had reason to believe any matter set out in paragraph (1) is on MIB but, in the absence of evidence to the contrary, proof by MIB of any of the following matters is to be taken as proof of the claimant's knowledge of the matter set out in paragraph (1)(b) -

- (a) that the claimant was the owner or registered keeper of the vehicle or had caused or permitted its use;
- (b) that the claimant knew the vehicle was being used by a person who was below the minimum age at which he could be granted a licence authorising the driving of a vehicle of that class; or
- (c) that the claimant knew that the person driving the vehicle was disqualified from holding or obtaining a driving licence.

(4) In the case of a claim brought by the dependants or estate of a deceased person, it is the state of knowledge of the deceased which is determinative for the purpose of determining a claimant's state of knowledge under paragraph 8(1) where "dependant" has the same meaning as the term "dependant" in section 6(7) of the Contract and Tort Act 1960 (as amended).

(5) For the purposes of this clause -

- (a) references to the claimant being a passenger in a vehicle include references to the claimant being carried upon or entering or getting on to or alighting from the vehicle;
- (b) knowledge which the claimant had, or had reason to have, includes knowledge of matters which the claimant could reasonably be expected to have been aware of had the claimant not been under the self-induced influence of drink or drugs; and
- (c) the "owner", in relation to a vehicle which is the subject of a hiring agreement or a hire-purchase agreement, means the person in possession of the vehicle under that agreement.

Insurer's recovery from its insured

9. MIB is not liable for any claim, or any part of a claim, where the insurer is entitled to recover all or part of its outlay from the claimant under section 13(4)(A) of the 1986 Act.

Insolvency of insurer

10. (1) MIB is not liable for a claim, or any part of a claim, arising out of a relevant liability incurred

by the user of a vehicle which is covered, whether through contract, statutorily or otherwise, by a contract of insurance but where such liability cannot be met by the insurer in question due to it having insufficient funds or it being in insolvency.

(2) Paragraph 1 applies to a claim which arises from an accident occurring either before or after the date referred to in clause 2(1) provided that the insufficiency of funds or insolvency arises on or after that date.

LIMITATION ON MIB'S OBLIGATION

Compensation for damage to property

11. (1) Where MIB's total liability in respect of all claims for property damage and losses arising from that damage made in respect of any one event would otherwise exceed the specified property damage cap, MIB's total liability in respect of all such claims is limited to a sum equal to the specified property damage cap.

(2) MIB's liability under paragraph (1) will be calculated from the date of receipt of each claim such that, once the specified property damage cap is reached, MIB is not liable for any further such claims.

(3) For the purposes of this clause, the 'specified property damage cap' means such sum as may from time to time be specified in the 1986 Act.

PRECONDITIONS TO MIB'S OBLIGATION

Form of claim and supply of information and/or documentation

12. (1) MIB incurs no liability under MIB's obligation unless and until an application is submitted to MIB

(a) in such form,

(b) accompanied by such signatures and declarations,

(c) giving such information, and

(d) accompanied by such documents,

as MIB may reasonably require for the purpose of determining any aspect of the claim.

(2) MIB incurs no liability under MIB's obligation unless the claimant provides to MIB within a reasonable timeframe after being required to do so such further information and/or documentation in support of the claim as MIB may reasonably require.

- (3) Disputes under this clause shall be dealt with in accordance with clause 17.

Relevant proceedings: joinder and notice

13. (1) Subject to paragraph (2), MIB incurs no liability under MIB's obligation unless MIB is joined from the outset as an additional Defendant to the relevant proceedings.

(2) In the case of a relevant liability which the claimant initially and reasonably believes to be covered by a contract of insurance with an insurer whose identity can be ascertained, MIB is not entitled to rely on paragraph (1) if the claimant:

- (a) has given notice of commencement of the relevant proceedings complying with the requirements of section 13(2) of the 1986 Act to that insurer;
- (b) notifies MIB promptly after the claimant ceases to have a reasonable belief as to the involvement of the insurer; and
- (c) consents to MIB being joined to the relevant proceedings; and
- (d) promptly sends to MIB a copy of any court proceedings, pleadings and documents, and any evidence and supporting documentation which has previously been sent to the Defendant or the insurer.

- (3) For the purposes of this clause "commencement" means the date on which the Claim Form or other originating process is issued by a Court in Gibraltar.

Prosecution of proceedings

14. (1) MIB incurs no liability under MIB's obligation unless the claimant has;
- (a) if required by MIB, and having been granted an indemnity by MIB as to the reasonable costs incurred, taken all reasonable steps to obtain Judgment against every person who may be liable (including any person who may be vicariously liable) in respect of the injury or death or damage to property; and

(b) having been required to take any steps under paragraph (a), allowed MIB to control the steps to be taken and acted in accordance with MIB's reasonable instructions.

- (2) Disputes under this clause shall be dealt with in accordance with clause 17.

Assignment of judgments, settlements and undertakings

15. MIB incurs no liability under MIB's obligation unless the claimant has -

(a) assigned to MIB the unsatisfied judgment, whether or not that judgment includes an



amount in respect of a liability other than a relevant liability, and the benefit of any order for costs made in the relevant proceedings, or

- (b) agreed in writing to assign to MIB the benefit of any future settlement or judgment (including costs) in respect of a relevant liability where MIB settles the claimant's claim by agreement prior to an unsatisfied judgment being obtained; and
- (c) undertaken to repay to MIB any sum paid to him –
 - (i) by MIB in discharge of MIB's obligation if the judgment is subsequently set aside either as a whole or in respect of the part of the relevant liability to which that sum relates;
 - (ii) by any other person, except pursuant to any criminal injuries compensation scheme established in Gibraltar pursuant to EU Directive 2004/80, or its equivalent in respect of the same death, bodily injury or other damage to which the judgment or settlement relate.

MISCELLANEOUS

Notifications of decisions by MIB

16. Where a claimant has made an application in accordance with clause 12, MIB must -
- (a) give a reasoned reply to any request made by the claimant relating to the payment of compensation under MIB's obligation, and
 - (b) as soon as reasonably practicable notify the claimant in writing of its decision regarding the payment of the relevant sum, together with the reasons for that decision.

Reference of disputes to an arbitrator

17. (1) In the event of any dispute as to the reasonableness of a requirement made by MIB under clause 12 or 14, it must be referred by the claimant or MIB to an arbitrator appointed by HMGOG.
- (2) Upon receiving a request for the appointment of an arbitrator to determine the dispute, HMGOG will appoint the first available member, by rotation, of a panel of Queen's Counsel appointed for the purpose of determining disputes under this Agreement by Her Majesty's Attorney General for Gibraltar and must promptly notify the claimant and MIB of the appointment.
- (3) The arbitrator, whose written decision is final, will determine the dispute solely by reference to the written submissions received pursuant to paragraph (4) and only after the time limits for such submissions to be supplied have expired.

(4) Where a dispute is referred to an arbitrator –

- (a) MIB must, within 28 days of receiving notification of the arbitrator’s appointment, supply the arbitrator and the claimant with notice in writing setting out the nature of the dispute and the reasons for the referral together with such further information as MIB considers relevant;
- (b) Within 28 days of receipt of MIB’s notice under sub-paragraph (a), the claimant may reply in writing to the arbitrator and to MIB setting out the claimant’s grounds for objecting to MIB’s requirement together with such further information as the claimant considers relevant.

Apportionment of damages, etc.

18. (1) Where an unsatisfied judgment which includes an amount in respect of a liability other than a relevant liability has been assigned to MIB under clause 15(a), MIB must -
- (a) apportion any sum it receives in satisfaction or partial satisfaction of the judgment according to the proportion which the damages awarded in respect of the relevant liability bear to the damages awarded in respect of the other liability, and
 - (b) account to the claimant in respect of the monies received properly apportionable to the other liability.
- (2) Where the sum received includes an amount in respect of interest or an amount awarded under an order for costs, the interest or the amount received under the order must be dealt with in the manner provided in paragraph (1).

SIGNATURE

This Agreement may be executed in two counterparts with the same effect as if both parties execute a single document.

This Agreement has been executed as a deed and is delivered and made on the date stated at the beginning of it.

<p>Signed, sealed and delivered by the Chief Secretary for and on behalf of HM GOVERNMENT OF GIBRALTAR</p> <p>Signature:</p> <p>Print name:</p>
<p>The common seal of the MOTOR INSURERS' BUREAU was affixed here in the presence of:</p> <p>(1) Director of the Board of Management</p> <p>(2) Secretary</p> <p>Print Names:</p> <p>(1).....</p> <p>(2).....</p>