

## GUIDE

# The Deregulation Act 2015

## The impact on the motor insurance industry

The Deregulation Act 2015 (the Act) aims to streamline legislation and remove “red-tape” in regulatory procedures. The Act targets a broad range of areas including employment, housing and transport and significantly impacts on the commercial landscape for motor insurers. The relevant changes came into effect on 30 June 2015 and affect all currently active policies.

### The Old Law

Previously, Section 147 of the Road Traffic Act 1988 (RTA) provided that a motor insurance policy is of no effect until a Certificate of Insurance has been delivered to the policyholder.

On cancellation of a policy the insurer remained liable for any third party claims until either the Certificate had been returned or insurers began proceedings to enforce surrender.

In reality this meant that if a policyholder failed on cancellation to deliver up the Certificate insurers would remain liable for any claims brought against the policy until such time as the certificate was surrendered.

Even if the insurer obtained a Section 152 (RTA) declaration it still had Article 75 liability (Article 75 of the Motor Insurance Bureau’s Articles of Agreement) unless the insurance was cancelled before the accident and either the Certificate was returned or, before the accident, the insurer had commenced proceedings under the RTA in respect the failure to surrender (a very rare occurrence).

### The New Law

Section 9 of the Deregulation Act has amended the RTA 1988 as follows:-

- Delivery of the Certificate is no longer necessary in order to trigger insurers’ liability under Section 151. Inception of the policy is now enough to commence the Section 151 liability.

- Section 152 has been amended to remove the requirement for motorists to surrender their Certificates of insurance upon cancellation of a policy.
- It will no longer be a criminal offence if an insured fails to return a Certificate after the cancellation of a policy.
- Furthermore, Article 75 has been updated to reflect these changes such that, in respect of policies cancelled on or after 30 June 2015, Article 75 liability will not attach provided the policy has been cancelled by mutual consent or in accordance with any provisions within it before the date on which the RTA liability was incurred and provided that the MID (Motor Insurance Database) record has also been updated to show that the policy has been cancelled.

### Consequences for Insurers

- Although a Certificate of Insurance will still be issued it is the MID which will record the actual inception date of cover. Fleet insurers, however, should retain the practise of issuing certificates promptly as individual vehicles are not always entered on the MID.
- When an insurer cancels a policy (in accordance with the terms of the policy or by consent) the cancellation extinguishes any future RTA liability without the need for a policyholder to acknowledge that cancellation by returning the Certificate or making a statutory declaration to that effect.
- However, unless and until the MID is updated to record that cancellation the insurer will retain Article 75 liability.





## Actions Points

- The changes make it easier for insurers to bring their liability to an end, provided they have updated the MID immediately to reflect the correct insurance position.
- It will also be easier for insurers to cancel an insurance policy in respect of policyholders who are in breach of the terms of an insurance contract. Insurers will simply be able to cancel the policy in accordance with the cancellation terms. However, there is likely to be much greater scrutiny of the manner and terms of any cancellation if the insurer does cancel unilaterally and insurers should ensure that they do so strictly in accordance with the provisions of the policy and also that the grounds for cancellation are set out clearly within the policy and that the wording is not ambiguous. Cancellation periods, which usually consist of at least seven days written notice, and other procedural details should be highlighted to the policyholder.
- If a vehicle is reported as stolen insurers face a continued exposure to third party risks and, in light of the Deregulation Act, they may want to consider including a provision which immediately cancels the policy (without of course prejudicing the policyholder's theft claim) in such circumstances.
- Insurers should put in place strict procedures to ensure immediate updating of MID records if they wish to avoid future Article 75 liability.
- Policyholders should be advised clearly that their motor insurance commences on a specified date rather than when a Certificate of Insurance is received. They also need to understand that in order to cancel policies after 30 June 2015 they simply need to notify their brokers of the cancellation.
- It may well be appropriate for policies which are incepted over the internet to also be cancelled in a similar manner and again insurers should ensure that clear instructions are provided to policyholders as to how effective service of cancellation can be given.
- It is envisaged that the number of policies being cancelled by insurers may rise, and where insurers are faced with a choice between cancellation and avoidance (for example for misrepresentation or non-disclosure), the former may be a preferred choice. This is because the Deregulation Act applies to cancellations only and has no impact upon policies which have been avoided for misrepresentation or non-disclosure. In respect of avoided policies, it is still necessary for the insurer to obtain a Declaration from the Court to escape its RTA and/or Article 75 liabilities.
- However, insurers should note that cancelling a policy will, in effect, affirm its existence such that insurers will become liable for all claims arising before the cancellation date (even those claims which are unknown and/or unreported at the date of cancellation). If a policy has been in existence for several months and/or a claim has been intimated on it the insurer is best advised to utilise avoidance rather than cancellation.
- Insurers should also bear in mind that the FCA regulatory obligation to "treat customers fairly" may result in intervention by the Ombudsman. For example cancellation by an insurer of a policy involving a major claim will be closely scrutinised, and if not wholly in accordance with contractual terms, may be challenged. If any challenge is successful liability under Section 151 will remain. That said, the insurer may still have grounds to apply for a declaration under Section 152 to avoid the contract, subject to compliance with the time limits for such an application.

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