



ST HELENA

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INFRASTRUCTURE & PUBLIC UTILITIES

MOTOR VEHICLES (THIRD PARTY INSURANCE) ORDINANCE, 1962¹

Ordinance 3 of 1962

In force 16 October 1962

Amended by Ordinances 3 of 1985, 5 of 1985, 6 of 1990, 7 of 2013, 17 of 2016, 14 of 2017

No subsidiary legislation to 1 November 2017

Note:

References to the Road Traffic Ordinance, 2016, will become references to the Road Traffic Ordinance, 2016 when that Ordinance comes into force.

MOTOR VEHICLES (THIRD PARTY INSURANCE) ORDINANCE, 1962

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¹ Under section 10 of the Revised Edition of the Laws Ordinance, 1999 this text is authoritative and is the sole authentic edition in respect of the law contained in it as at 1 November 2017.

AN ORDINANCE to provide for compulsory insurance against third-party risks arising out of the use of motor vehicles.

Short title

1. This Ordinance may be cited as the Motor Vehicles (Third Party Insurance) Ordinance, 1962.

Interpretation

2. (1) In this Ordinance—
 “**driver**”, “**motor vehicle**”, “**owner**” (in relation to a motor vehicle which is the subject of a hiring agreement or a hire-purchase agreement) “**public service vehicle**” and “**road**” have the meanings respectively assigned to them by section 2 of the Road Traffic Ordinance, 1985;²
 “**driver’s licence**” means a licence granted under section 16 of the Road Traffic Ordinance, 1985;³
 “**insurer**” means a person approved by the Governor by notice in the *Gazette* as an insurer for the purposes of this Ordinance;
 “**policy**”, except where the context otherwise requires, means a policy of insurance which complies with the requirements of this Ordinance, and includes a cover note.

(2) *Omitted*

Users of motor vehicles to be insured against third party risks

3. (1) Subject to this Ordinance it is unlawful for any person to use or to cause or permit any other person to use a motor vehicle on a road unless there is in force a policy in relation to the use of the vehicle by that person, or that other person as the case may be.

(1A) A person charged with using a motor vehicle in contravention of this section is not to be convicted if the person proves that -

- (a) the vehicle did not belong to him or her and was not in his or her possession under a contract of hiring or of loan; **or**
- (b) he or she was using the vehicle in the course of his or her employment and he or she neither knew nor had reason to believe that there was not in force in relation to the vehicle such a policy of insurance as is mentioned in paragraph (a).

(2) A person who contravenes subsection (1) commits an offence.
 Penalty: A fine of £1,500 or imprisonment for 6 months, or both.

(2A) A person convicted of an offence under this section may be disqualified from holding or obtaining a driver’s licence for a period the court determines.

² To be replaced by section 2 of the Road Traffic Ordinance, 2016 when that Ordinance comes into force.

³ To be replaced by section 16 of the Road Traffic Ordinance, 2016 when that Ordinance comes into force.

(2B) Sections 23, 24 and 25 of the Road Traffic Ordinance, 2016⁴ (relating to persons disqualified from holding or obtaining a driver's licence) apply to a person disqualified under subsection (2A).

(3) This section does not apply to the lawful use of a motor vehicle in the public service of the Crown.

Requirements in respect of policies

4. **(1)** A policy of insurance which complies with the requirements of this Ordinance is a policy of insurance which—

- (a)* is issued by an insurer; and
- (b)* insures the person or persons or classes of persons specified in it in respect of any liability which may be incurred by any of such persons in respect of the death or bodily injury of any person caused by or arising out of the use on a road of a motor vehicle to which the policy relates.

(2) Such a policy is not required to cover—

- (a)* liability in respect of the death or bodily injury, in either case arising out of and in the course of his or her employment, of a person in the employment of a person insured by the policy;
- (b)* except in the case of a public service vehicle licensed to carry passengers and of a motor vehicle in which passengers are carried by reason or pursuant to a contract of employment with a person insured by the policy, liability in respect of the death or bodily injury of any person being carried in or upon or entering or mounting or alighting from the vehicle at the time of the occurrence out of which any claim arises;
- (c)* any contractual liability;
- (d)* liability in respect of a series of claims arising out of one event exceeding £250,000; or
- (e)* liability in respect of any judgement or order delivered or obtained from any court other than the Magistrate's Court or the Supreme Court.

Liability of insurer notwithstanding other law

5. Notwithstanding any rule of law or any provision of any enactment (other than this Ordinance) to the contrary, a person who issues a policy is liable to indemnify any person specified, or of a class specified, in the policy, in respect of any liability which the policy purports to cover in relation to that person or class.

Certain conditions of policies to be of no effect

6. **(1)** Any condition in a policy providing that no liability arises under the policy or that any liability so arising ceases if some specified thing is done or omitted to be done after the happening of any event giving rise to a claim under the policy is of no effect as

⁴ To be replaced by sections 23, 24 and 25 of the Road Traffic Ordinance, 2016 when that Ordinance comes into force.

respects the liabilities required by section 4(1)(b) to be covered by a policy.

(1A) Subsection (1) does not render void any provision in a policy requiring the person insured to repay to the insurer any sum which the insurer becomes liable to pay under the policy or which is applied to the satisfaction of the claims of third parties.

(2) So much of any policy as purports to restrict the insurance of the person insured by reference to—

- (a) the age or physical or mental condition of persons driving the vehicle;
- (b) the condition of the vehicle;
- (c) the number of persons that the vehicle carries;
- (d) the weight or physical characteristics of the goods that the vehicle carries;
- (e) the times at which or the areas within which the vehicle is used;
- (f) the horse-power, cylinder capacity or value of the vehicle;
- (g) the carrying on the vehicle of any apparatus; or
- (h) the carrying on the vehicle of any means of identification other than means of identification required to be carried by or under the Road Traffic Ordinance,⁵ is of no effect as respects the liabilities that are required by section 4(1)(b) of this Ordinance to be covered by a policy.

(3) Subsection (2) does not require an insurer to pay any sum in respect of the liability of any person otherwise than in or towards the discharge of that liability, and any sum paid by an insurer in or towards the discharge of any liability of any person which is covered by the policy by virtue only of subsection (2) is recoverable by the insurer from that person.

Insurance required before issue or renewal of motor vehicle licence

7. The licence required for a motor vehicle by section 9(1) of the Road Traffic Ordinance, 1985, must not be issued or renewed unless the person applying for the issue or renewal satisfies the licensing officer appointed for the purposes of that Ordinance that—

- (a) at the time when the licence or renewal comes into operation there will be in force a policy complying with the requirements of this Ordinance in relation to the use of the motor vehicle by the applicant or by other persons on the applicant's order or with the applicant's permission; or
- (b) that no such policy is required by this Ordinance.

Information required after accident

8. (1) If owing to the presence of a motor vehicle on a road an accident occurs involving personal injury to another person, the driver of the vehicle must as soon as possible, and in any case not more than 24 hours after the accident, report the accident at the police station in Jamestown and produce evidence to the satisfaction of the Director of Police that the vehicle was not being used in contravention of section 3 of this Ordinance.

(1A) A person who contravenes subsection (1) commits an offence.

⁵ To be replaced by sections 23, 24 and 25 of the Road Traffic Ordinance, 2016 when that Ordinance comes into force.

Penalty: A fine of £50.

(1B) Subsection (1) is in addition to and not in derogation of section 38 of the Road Traffic Ordinance, 1985 (which relates to accidents whereby damage or injury is caused to any person, vehicle or animal).

(2) The owner of a motor vehicle must give any information he or she is required by or on behalf of the Director of Police to give, for the purpose of determining whether the vehicle was being used in contravention of section 3 of this Ordinance on any occasion when the driver was required to produce evidence as in subsection (1).

(3) An owner who contravenes subsection (2) commits an offence.

Penalty: A fine of £20.

Saving of rights on death of person insured

9. **(1)** The rights of any person in respect of any liability incurred by an insured are, in the event of the death of the insured and notwithstanding any enactment to the contrary, preserved to and enforceable by the person against the personal representatives of the insured in the same manner and to the same extent as such rights would have been enforceable against the insured if he or she had survived, and section 5 of this Ordinance applies accordingly.

(2) In this section “**insured**” means a person insured in accordance with this Ordinance.

Persons against whom claims are made to give information as to insurance

10. **(1)** A person against whom a claim is made in respect of any such liability as is required by this Ordinance to be covered by a policy must on demand by or on behalf of the person making the claim state -

- (a)* whether or not he or she was insured in respect of that liability by a policy having effect for the purposes of this Ordinance; and
- (b)* if not, whether he or she would have been so insured if the insurer had not avoided or cancelled a policy,

and if he was or would have been so insured must give any particulars with respect to the policy as are reasonably demanded for the purposes of the claim.

(2) It is an offence for a person to –

- (a)* fail to comply with a demand made under subsection (1); or
- (b)* wilfully make any false statement in reply to any such demand.

Penalty: A fine of £20.

Duty to surrender policy on cancellation and to inform police

11. **(1)** If a policy has been effected and it is cancelled by mutual consent or by virtue of any provision in the policy, the person insured by the policy must within 7 days of the taking effect of the cancellation -

- (a)* surrender the policy to the insurer; or

(b) if the policy has been lost or destroyed, make a statutory declaration to that effect.

(2) If a policy has been cancelled or has expired and is not renewed, the person insured by the policy must immediately inform the Director of Police in writing of the cancellation or expiry of the policy, as the case may be.

(3) A person who fails to comply with the requirements of this section commits an offence.

Penalty: A fine of £20.

Duty of insurers to satisfy judgments

12. (1) If after a policy has been effected in favour of any person judgment in respect of any such liability as is required by this Ordinance to be covered by a policy (being a liability covered by the policy) is obtained against any person insured by the policy, then, even if the insurer is entitled to avoid or cancel or has avoided or cancelled the policy, the insurer must, subject to this section, pay to the person or persons entitled to the benefit of the judgment any sum payable under it in respect of the liability, including any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments.

(2) No sum is payable by an insurer under the foregoing provisions of this section—

- (a) in respect of any judgment unless before or within 10 days after the commencement of the proceedings in which the judgment was given the insurer had notice of the bringing of the proceedings; or
- (b) in respect of any judgment so long as execution on it is stayed pending an appeal; or
- (c) in connection with any liability if before the happening of the event which was the cause of the death or bodily injury giving rise to the liability the policy was cancelled by mutual consent or by virtue of any provision contained in it.

(3) No sum is payable by an insurer under subsection (1) or (2) if, in an action commenced before or within 3 months after the commencement of the proceedings in which the judgment was given, the insurer has obtained a declaration –

- (a) that apart from any provisions contained in the policy, the insurer is entitled to avoid it on the ground that it was obtained by the nondisclosure of a material fact or by a representation of fact which was false in some material particular; or
- (b) if the insurer has avoided the policy on the ground mentioned in paragraph (a) – that the insurer was entitled to do so apart from any provision contained in it.

(3A) An insurer who has obtained a declaration as mentioned in subsection (3) in an action does not thereby become entitled to the benefit of that subsection as respects any judgment obtained in proceedings commenced before the commencement of that action unless, before or within 10 days after the commencement of that action, the insurer has given notice of it to the person who is the plaintiff in the proceedings specifying the non-disclosure or false representation on which the insurer proposes to rely, and any person to whom notice of such an action is so given is entitled to be made a party to it.

(4) If the amount which an insurer becomes liable to pay under this section in respect of a liability of a person insured by a policy exceeds the amount for which the insurer would be liable apart from this section under the policy in respect of that liability, the insurer

is entitled to recover the excess from that person.

(5) In this section the expression “**material**” means of such a nature as to influence the judgment of a prudent insurer in determining whether to take the risk and if so at what premium and on what conditions, and the expression “**liability covered by the terms of the policy**” means a liability which is covered by the policy or which would be so covered but for the fact that the insurer is entitled to avoid or cancel or has avoided or cancelled the policy.

Registrar or Clerk of Peace to give notice to insurer

13. The Registrar of the Supreme Court or the Clerk of the Peace must, within 10 days of the commencement of any proceedings in the Supreme Court or the Magistrates’ Court, as the case may be, by a third party injured by a motor vehicle required to be insured by this Ordinance, give notice to the insurer of such proceedings.

Policies covering more than one vehicle

14. If a policy relates to more than one motor vehicle—
- (a) the policy is of no effect for the purposes of this Ordinance in relation to any of the vehicles unless the insurer issues a certificate in favour of the person by whom the policy is effected certifying that it is a vehicle to which a policy relates;
 - (b) references in sections 11 and 12 of this Ordinance to the loss and destruction of policies are to be construed as references to the loss and destruction of such certificates, and references in those sections to the cancellation and surrender of policies are to be construed as references to the cancellation and surrender of such certificates and copies of them relating to vehicles in respect of which the policy has ceased or is intended to cease to have effect.

Regulations

15. The Governor in Council may make regulations for carrying the purposes of this Ordinance into effect, and such regulations may prescribe penalties for the contravention of them.
