

THE UNTRACED DRIVERS' AGREEMENT

DEPARTMENT OF THE ENVIRONMENT
FOR NORTHERN IRELAND

Motor Insurers' Bureau

(COMPENSATION OF VICTIMS OF
UNTRACED DRIVERS)

Text of an Agreement dated 21st October 1998
between the Department of the Environment for Northern Ireland
and the Motors Insurers' Bureau together with
some notes on its scope and purpose

BELFAST: THE STATIONERY OFFICE

On 8th December 1969 the Ministry of Home Affairs and the Motor Insurers' Bureau entered into an Agreement ("the First Agreement") to secure compensation for third party victims of road accidents when the driver responsible for the accident could not be traced.

The First Agreement was replaced on 1st March 1973 by a new Agreement ("the Second Agreement") which operated in respect of accidents occurring on or after 8th March 1973.

The Second Agreement was added to by a Supplemental Agreement dated 3rd January 1978 ("the Third Agreement") which operated in respect of accidents occurring on or after 3rd January 1978.

The Second Agreement and the Third Agreement have now been replaced by a new Agreement ("this Agreement") which operates in respect of accidents occurring on or after 1st November 1998.

The text of this Agreement is as follows—

THE AGREEMENT

MEMORANDUM OF AGREEMENT made the 21st day of October 1998 between the Department of the Environment for Northern Ireland ("the Department") and Motor Insurers' Bureau, whose registered office is at 152 Silbury Boulevard, Milton Keynes, MK9 1NB ("MIB").

IT IS HEREBY AGREED as follows—

1.—(1) Subject to paragraph (2) of this Clause, this Agreement applies to any case in which an Application is made to MIB for a payment in respect of the death of or bodily injury to any person caused by or arising out of the use of a motor vehicle on a road in Northern Ireland and the case is one in which the following conditions are fulfilled, that is to say—

- (a) the event giving rise to the death or injury occurred on or after 1st November 1998;
- (b) the applicant for the payment either—
 - (i) is unable to trace any person responsible for the death or injury, or
 - (ii) in a case to which Clause 5 applies where more than one person was responsible, is unable to trace one of those persons.(Any person so untraced is referred to as "the untraced person");
- (c) the death or injury was caused in such circumstances that on the balance of probabilities the untraced person would be liable to pay damages to the applicant in respect of the death or injury;
- (d) the liability of the untraced person to pay damages to the applicant is one which is required to be covered by insurance or security under Part VIII of the Road Traffic (Northern Ireland) Order 1981 ("the 1981 Order"), it being assumed for this purpose, in the absence of evidence to the contrary, that the vehicle was being used in circumstances in which the user was required by the 1981 Order to be insured or secured against third party risks;
- (e) the death or injury was not caused by the use of the vehicle by the untraced person in any deliberate attempt to cause the death or injury of the person in respect of which an application is made; and
- (f) the application is made in writing within three years from the date of the event giving rise to the death or injury;
- (g) the event giving rise to death or injury was reported to the police within fourteen days or as soon as the applicant reasonably could and the applicant co-operated with the Royal Ulster Constabulary.

- (2) This Agreement does not apply to a case in which—
- (a) the death or bodily injury in respect of which any such application is made was caused by or arose out of the use of a motor vehicle which at the time of the event giving rise to the death or bodily injury was owned by or in the possession of the Crown, unless the case is one in which some other person has undertaken responsibility for the existence of a contract of insurance under the 1981 Order;
 - (b) at the time of the accident the person suffering death or bodily injury in respect of which the application is made was allowing himself to be carried in a vehicle and either before or after the commencement of his journey in the vehicle, if he could reasonably be expected to have alighted from the vehicle, he knew or had reason to believe that the vehicle—
 - (i) had been stolen or unlawfully taken; or
 - (ii) was being used without there being in force in relation to its use a contract of insurance which complied with the 1981 Order; or
 - (iii) was being used in the course or furtherance of crime; or
 - (iv) was being used as a means of escape from or avoidance of lawful apprehension.
 - (3) For the purpose of paragraph (2) of this Clause—
 - (a) a vehicle which has been unlawfully removed from the possession of the Crown shall be taken to continue in that possession whilst it is kept so removed;
 - (b) references to a person being carried in a vehicle include references to his being carried in or upon, or entering or getting on to or alighting from the vehicle;
 - (c) “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.

2.—(1) An application to MIB for a payment in respect of the death or bodily injury to any person may be made—

- (a) by the person for whose benefit that payment is to be made (“the applicant”); or
- (b) by any solicitor acting for the applicant; or
- (c) by any other person whom MIB may be prepared to accept as acting for the applicant.

(2) Any decision made, or award or payment given or made or other thing done in accordance with this Agreement to or by a person acting under paragraph 1(b) and 1(c) of this Clause on behalf of the applicant, or in relation to an application made by such a person, shall, whatever may be the age, or the circumstances affecting the capacity, of the applicant, be treated as having the same effect as if it had been done to or by, or in relation to an application made by, an applicant of full age and capacity.

3. Subject to the following provisions of this Agreement, MIB shall, on any application made to it in a case to which this Agreement applies, award to the applicant in respect of the death or injury for which the application is made a payment of an amount which shall be assessed in like manner as a court applying the law of Northern Ireland in a case where the event giving rise to the death or injury occurred in Northern Ireland would assess the damages which the applicant would have been entitled to recover from the untraced person in respect of that death or injury if the applicant had brought successful proceedings to enforce a claim for such damages against the untraced person.

4. In assessing the level of an award in accordance with Clause 3, MIB shall be under no obligation to include in such award any sum in respect of loss of earnings suffered by the applicant where and in so far as the applicant has in fact been paid wages or salary or

any sum in lieu of the same, whether or not such payments were made subject to an undertaking on the part of the applicant to repay the same in the event of the applicant recovering damages.

5.—(1) This Clause applies to any case—

- (a) to which this Agreement applies; and
- (b) the death or bodily injury in respect of which an application has been made to MIB under this Agreement (“the relevant death or injury”) was caused—
 - (i) partly by the untraced person and partly by an identified person, or by identified persons; or
 - (ii) partly by the untraced person and partly by some other untraced person or persons whose master or principal can be identified; and
- (c) in circumstances making the identified person or persons or any master or principal (“the identified person”) liable to the applicant in respect of the relevant death or injury.

(2) If in a case to which this Clause applies one or other of the conditions in paragraph (3) of this Clause is satisfied, the amount of the award to be paid by MIB to the applicant in respect of the relevant death or injury shall be determined in accordance with paragraph (4) of this Clause and its liability to the applicant shall be subject to paragraph (7) of this Clause and Clause 6 of this Agreement.

(3) The conditions referred to in paragraph (2) of this Clause are—

- (a) that the applicant has obtained a judgment in respect of the relevant death or injury against the identified person (“the original judgment”) which has not been satisfied in full within three months from the date on which the applicant became entitled to enforce it (“the three month period”); or
- (b) that the applicant—
 - (i) has not obtained and has not been required by MIB to obtain a judgment in respect of the relevant death or injury against the identified person, and
 - (ii) has not received any payment by way of compensation from the identified person or persons.

(4) The amount to be awarded by MIB to the applicant in a case to which this Clause applies shall be determined as follows—

- (a) if the condition in paragraph (3)(a) of this Clause is satisfied and the original judgment is wholly unsatisfied within the three month period, the amount to be awarded shall be an amount equal to that proportion of a full award attributable to the untraced person;
- (b) if the condition in paragraph (3)(a) of this Clause is satisfied but the original judgment is satisfied in part only within the three month period, the amount to be awarded—
 - (i) if the unsatisfied part of the original judgment is less than the proportion of a full award attributable to the untraced person, shall be an amount equal to that unsatisfied part, or
 - (ii) if the unsatisfied part of the original judgment is equal to or greater than the proportion of a full award attributable to the untraced person, shall be an amount equal to the untraced person’s proportion;
- (c) if the condition in paragraph (3)(b) of this Clause is satisfied the amount to be awarded shall be an amount equal to the proportion of a full award attributable to the untraced person.

(5) The following provisions of this paragraph shall have effect in any case in which an appeal from or any proceedings to set aside the original judgment is commenced within a period of three months beginning on the date on which the applicant became entitled to enforce the original judgment—

- (a) until the said appeal or proceeding is disposed of the provisions of this Clause shall have effect as if for the three month period there were substituted a period expiring on the date when the said appeal or proceeding is disposed of;
- (b) if as a result of the appeal or proceeding the applicant ceases to be entitled to receive any payment in respect of the relevant death or injury from any person or persons against whom he has obtained the original judgment the provisions of this Clause shall have effect as if he had neither obtained nor been required by MIB to obtain a judgment against any person or persons;
- (c) if as a result of the appeal or proceeding, the applicant becomes entitled to recover an amount which differs from that which he was entitled to recover under the original judgement, the provisions of this Clause shall have effect as if for the reference in paragraph (3)(a) to the original judgment there were substituted a reference to the judgment under which the applicant became entitled to the said different amount;
- (d) if as a result of the said appeal or proceeding the applicant remains entitled to enforce the original judgment the provisions of this Clause shall have effect as if for the three month period there were substituted a period of three months beginning on the date on which the appeal or other proceeding was disposed of.

The provisions of this paragraph shall apply also in any case where any judgment given upon any such appeal or proceeding is itself the subject of a further appeal or similar proceeding and shall apply in such a case in relation to that further appeal or proceeding in the same manner as they apply in relation to the first mentioned appeal or proceeding.

(6) In this Clause—

- (a) “full award” means the amount which would have fallen to be awarded to the applicant under Clause 3 in respect of the relevant death or injury if the untraced person had been adjudged by a court to be wholly responsible for that death or injury; and
- (b) “the proportion of a full award attributable to the untraced person” means that proportion of a full award which on the balance of probabilities would have been apportioned by a court in proceedings between the untraced person and any other person liable in respect of the same event as the share to be borne by the untraced person in the responsibility for the event giving rise to the relevant death or injury.

(7) MIB shall not be under any liability in respect of the relevant death or injury if the applicant is entitled to receive compensation from MIB in respect of that death or injury under any Agreement providing for the compensation of victims of uninsured drivers entered into between the Department and MIB.

6.—(1) Any liability falling upon MIB upon an application made to it under this Agreement in respect of any death or injury, shall be subject to the following conditions—

- (a) the applicant shall give all such assistance as may reasonably be required by or on behalf of MIB to enable any investigation to be carried out under this Agreement, including, in particular, the provision of statements and information either in writing, or, if so required, orally at an interview or interviews between the applicant and any person acting on behalf of MIB;
- (b) at any time before MIB has communicated its decision upon the application to the applicant, the applicant shall, subject to the following provisions of this Clause, take all such steps as in the circumstances it is reasonable for MIB to require him to take to obtain judgment against any person or persons in respect of their liability

to the applicant for the death or injury as having caused or contributed to that death or injury or as being the master or principal of any person who has caused or contributed to that death or injury; and

(c) if required by MIB the applicant shall assign to MIB or to its nominee any judgment obtained by him (whether or not obtained in accordance with a requirement under sub-paragraph (b) of this paragraph) in respect of the death or injury to which his application to MIB relates upon such terms as will secure that MIB or its nominee shall be accountable to the applicant for any amount by which the aggregate of all sums recovered by MIB or its nominee under the judgment (after deducting all reasonable expenses incurred in effecting such recovery) exceeds the amount payable by MIB to the applicant under this Agreement in respect of that death or injury.

(2) If MIB requires the applicant to bring proceedings against any specified person or persons—

(a) MIB shall indemnify the applicant against all costs reasonably incurred by him in complying with that requirement unless the result of those proceedings materially contributes to establishing that the untraced person did not cause or contribute to the relevant death or injury; and

(b) the applicant shall, if required by MIB and at its expense, provide MIB with a transcript of any official shorthand note taken in those proceedings of any evidence given or judgment delivered therein.

(3) In the event of a dispute arising between the applicant and MIB as to the reasonableness of any requirement by MIB under paragraph (1)(b) of this Clause or as to whether any such costs as are referred to in paragraph (2)(a) of this Clause were reasonably incurred, that dispute shall be referred to the Department whose decision shall be final:

Provided that any dispute arising between the applicant and MIB as to whether MIB are required to indemnify him under paragraph (2)(a) of this Clause shall, in so far as it depends on the question whether the result of any proceedings which MIB has required the applicant to bring against any specified person or persons has or has not materially contributed to establish that the untraced person did not cause or contribute to the relevant death or injury, be referred to the arbitrator in accordance with the following provisions of this Agreement, whose decision on that question shall be final.

7. MIB shall cause any application made to it for a payment under this Agreement to be investigated and, unless it decides that the application should be rejected because a preliminary investigation has disclosed that the case is not one to which this Agreement applies, it shall cause a report to be made on the application and on the basis of that report it shall decide whether to make an award and, if so, the amount of the award which shall be calculated in accordance with the provisions of this Agreement.

8. MIB may before coming to a decision on any application made to it under this Agreement request the applicant to provide it with a statutory declaration to be made by the applicant, setting out to the best of his knowledge, information and belief the facts and circumstances upon which his claim to an award under this Agreement are based, or facts and circumstances as may be specified by it.

9.—(1) MIB shall notify its decision to the applicant and when so doing shall—

(a) if the application is rejected because a preliminary investigation has disclosed that it is not one made in a case to which this Agreement applies, give its reason for the rejection; or

(b) if the application has been fully investigated provide him with a statement setting out—

- (i) the circumstances in which the death or injury occurred and the relevant evidence,
 - (ii) the circumstances relevant to the assessment of the amount to be awarded to the applicant under this Agreement and the relevant evidence, and
 - (iii) if it refuses to make an award, its reasons for that refusal; and
- (c) in a case to which Clause 5 of this Agreement applies specify the way in which the amount of that award has been computed and its relation to those provisions of Clause 5 which are relevant to its computation.

(2) Where MIB has decided that it will not indemnify the applicant against the costs of any proceedings which it has under Clause 6(1)(b) required him to bring against any specified person or persons on the ground that those proceedings have materially contributed to establish that the untraced person did not cause or contribute to the relevant death or injury, it shall give notice to the applicant of that decision together with its reasons for it and shall provide the applicant with a copy of any transcript of any evidence given or judgment delivered in those proceedings as is mentioned in Clause 6(2)(b) hereof which it regards as relevant to that decision.

10.—(1) Subject to the provisions of this Agreement, where MIB has decided to make an award to the applicant, it shall pay the applicant the amount of that award if—

- (a) it has been notified by the applicant that the award is accepted; or
- (b) at the expiration of the period during which the applicant may give notice of an appeal under Clause 11 the applicant has not given MIB either any such notification of the acceptance of its award or a notice of an appeal under Clause 11.

(2) Such payment as is made under paragraph (1) of this Clause shall discharge MIB from all liability under this Agreement in respect of the death or injury for which that award has been made.

11.—(1) The applicant shall have a right of appeal to an arbitrator against any decision notified to him by MIB under Clause 9 if—

- (a) he gives notice to MIB, that he wishes to appeal against its decision (“the notice of appeal”);
- (b) he gives MIB notice of appeal within 6 weeks from the date when he was given notice of the decision against which he wishes to appeal; and
- (c) he has not previously notified MIB that he has accepted its decision.

(2) The grounds of appeal are as follows—

- (a) where the application has not been the subject of a full investigation—
 - (i) that the case is one to which this Agreement applies, and
 - (ii) that the applicant’s application should be fully investigated by MIB with a view to its deciding whether or not to make an award to him and, if so, the amount of that award; or
- (b) where the application has been fully investigated—
 - (i) that MIB was wrong in refusing to make an award, or
 - (ii) that the amount it has awarded to the applicant is insufficient; or
- (c) in a case where a decision not to indemnify the applicant against the costs of any proceedings has been notified to the applicant by MIB under Clause 9(2), that that decision was wrong.

12. A notice of appeal under Clause 11 shall state the grounds of the appeal and shall be accompanied by an undertaking given by the applicant or by the person acting on his behalf under Clause 2(1)(b) and 2(1)(c), that—

- (a) the applicant will accept the decision of the arbitrator; and
- (b) the arbitrator's fee shall be paid to MIB by the applicant or by the person who has given the undertaking in any case where MIB is entitled to reimbursement of that fee under the provisions of Clause 22.

13.—(1) When giving notice of his appeal or at any time before doing so, the applicant may—

- (a) make comments to MIB on its decision; and
- (b) supply it with such particulars as he thinks fit of any further evidence not contained in the written statement supplied to him by MIB which he considers is relevant to the application.

(2) MIB may, before submitting the applicant's appeal to the arbitrator—

- (a) cause an investigation to be made into further evidence supplied by the applicant under paragraph (1)(b) of this Clause; and
- (b) report to the applicant the result of that investigation and of any change in its decision which may result from it.

(3) The applicant may, within six weeks from the date on which the report referred to in paragraph (2)(b) of this Clause was sent to him, unless he withdraws his appeal, make such comments on the reports as he may desire to have submitted to the arbitrator.

14.—(1) In a case where MIB receives from the applicant a notice of appeal in which the only ground of appeal which is stated is that the amount awarded to the applicant is insufficient, before submitting that appeal to the arbitrator MIB may—

- (a) give notice to the applicant that if the appeal proceeds it will request the arbitrator to decide whether the case is one in which MIB should make an award at all; and
- (b) at the same time as complying with paragraph (1)(a) of this Clause provide the applicant with a statement setting out such comments as it may consider relevant to the decision which the arbitrator should come to on that question.

(2) Where MIB gives the applicant notice under paragraph 1(a) of this Clause, the applicant may, within six weeks from the date on which that notice is given—

- (a) make such comments to MIB and supply it with particulars of other evidence not contained in any written statement provided to him by MIB as he may consider relevant to the question which the arbitrator is by that notice requested to decide; and
- (b) Clause 13 shall apply in relation to any comments made or particulars supplied by the applicant under paragraph (2)(a) of this Clause.

15.—(1) Subject to paragraph (2) of this Clause, where MIB receives a notice of appeal from the applicant under the provisions of this Agreement, unless the appeal is previously withdrawn, it shall—

- (a) submit that appeal to an arbitrator for a decision; and
- (b) send to the arbitrator for the purpose of obtaining his decision—
 - (i) the application made by the applicant,
 - (ii) a copy of its decision as notified to the applicant, and
 - (iii) copies of all statements, declarations, notices, undertakings, comments, transcripts, particulars of reports provided, given or sent to MIB under this Agreement either by the applicant or any person acting for him under Clause 2(1)(b) or 2(1)(c) by MIB.

(2) In a case where MIB causes an investigation to be made under Clause 13, MIB shall not comply with paragraph (1) of this Clause until—

- (a) the expiration of six weeks from the date on which it sent the applicant a report as to the result of that investigation; or
- (b) the expiration of six weeks from the date on which it gave the applicant notice under Clause 14(1); or
- (c) the expiration of six weeks from the date on which it sent the applicant a report as to the result of that investigation, if it has caused an investigation to be made into any evidence supplied under Clause 14(2).

16. On an appeal made by the applicant in accordance with this Agreement—

- (a) if the appeal is against a decision by MIB rejecting an application because a preliminary investigation has disclosed that the case is not one to which this Agreement applies, the arbitrator shall decide whether the case is or is not one to which this Agreement applies and, if he decides that it is such a case, shall remit the application to MIB for full investigation and a decision in accordance with the provisions of this Agreement;
- (b) if the appeal is against a decision by MIB given after an application has been fully investigated by it (whether before the appeal or in consequence of its being remitted for such investigation under paragraph (a) of this Clause) the arbitrator shall decide, as may be appropriate, having regard to the grounds stated in the notice of appeal and to any notice given by MIB to the applicant under Clause 14, whether MIB should make an award under this Agreement to the applicant and, if so, the amount which it should award to the applicant under the provisions of this Agreement;
- (c) if the appeal relates to a dispute which has arisen between the applicant and MIB which is required by the proviso to Clause 6(3) to be referred to the arbitrator, the arbitrator shall also give his decision on that dispute.

Provided that where the arbitrator has allowed an appeal under paragraph (a) of this Clause all the provisions of this Agreement shall apply as if the case were an application to which this Agreement applies upon which MIB had not communicated a decision.

17.—(1) Subject to paragraph (2) of this Clause, the arbitrator shall decide the appeal on the documents submitted to him under Clause 15(1)(b) and no further evidence shall be produced to him.

(2) The following shall apply where documents have been submitted to the arbitrator under Clause 15(1)(b)—

- (a) the arbitrator shall be entitled to ask MIB to make any further investigation which he considers desirable and to submit a written report of its findings to him for his consideration; and
- (b) MIB shall send a copy of that report to the applicant who shall be entitled to submit written comments on it to MIB within four weeks of the date on which that copy is sent to him; and
- (c) MIB shall transmit those comments to the arbitrator for his consideration.

18. The arbitrator by whom an appeal made by an applicant in accordance with the provisions of this Agreement shall be considered shall be an arbitrator to be selected by the Department from two panels of Queen's Counsel appointed by the Lord Chief Justice of Northern Ireland for the purpose of determining appeals under this Agreement.

19. The arbitrator shall notify his decision on any appeal under this Agreement to MIB and MIB shall forthwith send a copy of the Arbitrator's decision to the applicant.

20. Subject to the provisions of this Agreement, MIB shall pay the applicant any amount which the arbitrator has decided shall be awarded to him, and that payment shall discharge MIB from all liability under this Agreement in respect of the death or injury in respect of which that decision has been given.

21. Each party to the appeal will bear their own costs.

22. MIB shall pay the arbitrator a fee approved by the Lord Chief Justice of Northern Ireland, after consultation with MIB.

Provided that, in any case where it appears to the arbitrator that there were no reasonable grounds for the appeal, the arbitrator may in his discretion decide—

- (a) that his fee ought to be paid by the applicant; and
- (b) that the person giving the undertaking required by Clause 12 shall be liable to reimburse MIB the amount of the fee paid by it to the arbitrator, except in so far as that amount is deducted by MIB from any amount which it is liable to pay to the applicant in consequence of the decision of the arbitrator.

23. If in any case it appears to MIB that by reason of the applicant being under the age of majority or of any other circumstances affecting his capacity to manage his affairs it would be in the applicant's interest that all or some part of the amount which would otherwise be payable to him under an award made under this Agreement should be administered for him by the Family Welfare Association or by some other body or person under a trust or by the Court of Protection MIB may establish for that purpose a trust of the whole or part of the amount to take effect for a period and under provisions as may appear to it to be appropriate in the circumstances of the case or may initiate or cause any other person to initiate process in that Court and otherwise cause any amount payable under the award to be paid to and administered thereby.

24. In any case in which an application has been made to MIB under Clause 2(1) and in which preliminary investigation under Clause 7 has disclosed that the case is one to which the Agreement, save for Clause 5, applies, MIB may, instead of causing a report to be made on the application as provided by Clause 7, make, or cause to be made, to the applicant an offer to settle his application in a specified sum, assessed in accordance with Clause 3.

25. Where an offer is made under Clause 24, there shall be provided to the applicant (at the same time) in writing particulars of—

- (a) the circumstances in which the death or injury occurred and the relevant evidence; and
- (b) the circumstances relevant to the assessment of the amount to be awarded to the applicant and the relevant evidence.

26.—(1) On receipt by MIB or its agent of an acceptance of the offer referred to in Clause 24—

- (a) this acceptance shall have effect in relation to the application as if in Clause 7 the words “and, unless MIB decide” to the end of that Clause, and Clauses 9 to 22 inclusive were omitted; and
- (b) MIB shall pay to the applicant the amount specified in the offer.

(2) The payment made by MIB under paragraph (1)(b) of this Clause shall discharge it from all liability under this Agreement in respect of the death or injury for which the payment has been made.

27. This Agreement may be determined at any time by the Department or by MIB by either of them giving to the other not less than twelve months previous notice in writing.

Provided that this Agreement shall continue to have effect in any case where the event giving rise to the death or injury occurred before the date on which this Agreement terminates in accordance with any notice so given.

28. From 1st November 1998 the following periods of operation shall apply—

- (a) this Agreement shall come into operation on 1st November 1998 in relation to accidents occurring on or after that date;
- (b) the Second Agreement shall cease and determine except in relation to applications arising out of accidents which occurred on or after 8th March 1973 and before 3rd January 1978; and
- (c) the Third Agreement shall cease and determine except in relation to accidents occurring on or after 3rd January 1978 and before 1st November 1998.

IN WITNESS whereof the Department of the Environment for Northern Ireland has caused its official Seal to be hereto affixed and Motor Insurers' Bureau has caused its Common Seal to be hereto affixed the day and year first above written.

THE OFFICIAL SEAL of
the Department of the Environment for
Northern Ireland hereunto affixed
is authenticated by:

} (L.S.)

J. Ritchie
Assistant Secretary

THE COMMON SEAL of
the Motor Insurers' Bureau
was hereunto affixed in the
presence of

} (L.S.)

L. Howell *P. A. Horton*
Directors of the Board of Management
B. Louisy
Secretary

NOTES

The following Notes are for the guidance of those who may wish to make application to Motor Insurers' Bureau for payment under the Agreement, and for the guidance of their legal advisers, but they must not be taken as making unnecessary a careful study of the Agreement itself. Communications connected with the Agreement should be addressed to Motor Insurers' Bureau ("MIB"), whose address is 152 Silbury Boulevard, Central Milton Keynes, MK9 1NB.

1. This Agreement replaces a previous one dated 1st March 1973 and a Supplemental Agreement dated 3rd January 1978 and continues the arrangements which have existed since 1946 under which MIB has made ex gratia payments in respect of death or personal injuries resulting from the use on the road of a motor vehicle the owner or driver of which cannot be traced. Provision is made for an appeal against MIB's decision in such cases.

2. The Agreement dated 1st March 1973 applies to a death or bodily injury arising out of an accident occurring on a road in Northern Ireland on or after 8th March 1973 and before 3rd January 1978. The Agreement dated 1st March 1973 as supplemented by the Supplemental Agreement dated 3rd January 1978 applies in relation to accidents occurring on or after 3rd January 1978 and before 1st November 1998. This Agreement applies in relation to accidents occurring on or after 1st November 1998.

3. Subject to the terms of the Agreement, MIB will accept applications for a payment in respect of the death of, or bodily injury to any person resulting from the use of a motor vehicle on a road in Northern Ireland in any cases in which—

- (a) the applicant for the payment cannot trace any person responsible for the death or injury (or, in certain circumstances, a person partly responsible) (Clause 1(1)(b)); and
- (b) the death or injury was caused in such circumstances that the untraced person would be liable to pay damages to the applicant in respect of the death or injury (Clause 1(1)(c)); and
- (c) the untraced person's liability to the applicant is one which at the time the accident occurred, was required to be covered by insurance or security (Clause 1(1)(d)).

MIB will not deal with the following—

- (a) deliberate "running down" cases (Clause 1(1)(e));
- (b) certain other cases relating to Crown vehicles; and
- (c) certain categories of "voluntary" passenger (Clause 1(2)-(4)).

4. Applications for a payment under the Agreement must be made in writing to MIB within 3 years of the date of the accident giving rise to the death or injury (Clause 1(1)(f)).

5. Under Clause 3, the amount which MIB will award will (except for the exclusion of those elements of damages mentioned in Clause 4) be assessed in the same way as a Court would have assessed the amount of damages payable by the untraced person had the applicant been able to bring a successful claim for damages against him.

6. Clause 5 relates to cases where an untraced person and an identified person are each partly responsible for a death or injury, and defines the conditions under which MIB will in such cases make a contribution in respect of the responsibility of the untraced person.

7. Under Clause 6(1)(b), MIB may require the applicant to bring proceedings against any identified person who may be responsible for the death or injury, subject to indemnifying the applicant as to his costs as provided in Clause 6(2) and (3).

8. On receipt of an application, MIB will, if satisfied that the application comes within the terms of the Agreement, investigate the circumstances and, when this has been done, decide whether to make a payment and, if so, how much (Clause 7).

9. MIB may request the applicant to make a statutory declaration setting out all, or some, of the facts on which his application is based (Clause 8).

10. MIB may notify the applicant of its decision, setting out the circumstances of the case and the evidence on which it bases its decision and, if it refuses to make a payment, the reasons for the refusal (Clause 9).

11. If the applicant does not exercise his right to appeal against the Bureau's decision, the Bureau's decision will be final and the applicant will be entitled to be paid the amount awarded by the Bureau (Clause 10).

12. If the applicant wishes to appeal against the decision on the grounds specified in Clause 11(2), he must notify MIB within six weeks of being notified of the decision, and he or any person acting on his behalf shall give the undertakings set out in Clause 12.

13. MIB may, as a result of the comments made and further evidence submitted by the applicant on its decision, investigate the further evidence, and if so it will communicate with the applicant again. In such a case the applicant will have six weeks from the date of that further communication in which to decide whether or not to go on with the appeal (Clause 13).

14. Where the applicant appeals only on the grounds that the amount awarded to him is too low, MIB may give him notice that if the matter proceeds to appeal, it will ask the arbitrator to decide also the issue of MIB's liability to make any payment. The applicant will have six weeks from the date of any such notice in which to comment to MIB on this intention (Clause 14).

15. Appeals will be decided by an arbitrator who will be a Queen's Counsel selected by the Department from the panel to be appointed by the Lord Chief Justice of Northern Ireland (Clause 18).

16. All appeals will be decided by the arbitrator on the basis of the relevant documents (as set out in Clause 15) which will be sent to him by MIB. If the arbitrator asks MIB to make a further investigation, the applicant will have an opportunity to comment on the result of that investigation (Clause 17).

17. The arbitrator may, at his discretion, award the cost of this fee against the applicant if he considers the appeal unreasonable; otherwise, each party to the appeal will bear their own costs, MIB paying the arbitrator's fee (Clause 21 and 22).

18. In certain circumstances, MIB may establish a trust for the benefit of an applicant of the whole or part of any award (Clause 23).

19. Clauses 24 to 26 provide for the use of a shorter form of procedure than that stipulated in Clause 7 with the object of securing speedier disposal of certain applications to MIB. MIB may, as its discretion, make an offer of an award in a specified sum providing the applicant at the same time with particulars of the circumstances of the case and of the evidence on which the offer is based. If the applicant is prepared to accept the offer, thus undertaking, on payment by MIB, to forego any right of appeal to an arbitrator, MIB will pay the sum offered forthwith. If the offer is not acceptable the application will thereafter be dealt with in accordance with the full procedure set out in the Agreement.

The shorter form of procedure does not apply in a case where both an untraced person and an identified person may each partly be responsible for injuries giving rise to an application to MIB.