



# Driving Instruction (Suspension and Exemption Powers) Act 2009

## 2009 CHAPTER 17

An Act to provide for the suspension in certain circumstances of registration and licences relating to the provision of driving instruction; to make provision about exemptions from prohibitions concerning registration (including provision about suspension); to make provision about compensation in connection with suspension; and for connected purposes. [12th November 2009]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PROSPECTIVE

### *Suspension of registration*

#### **1 Suspension of registration**

- (1) After section 128 of the Road Traffic Act 1988 (c. 52) (as substituted by Schedule 6 to the Road Safety Act 2006 (c. 49)) (termination of registration by Registrar) insert—

#### **“128ZA Suspension of registration by Registrar**

- (1) The Registrar may suspend a person's registration in respect of any description of driving instruction if the Registrar—
- (a) has given, or is about to give, the person notice under section 127(5) or 128(4) in relation to the person's registration in respect of that description of driving instruction,

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- (b) is considering whether to refuse the application for an extension of the person's registration or (as the case may be) whether to terminate the person's registration, or has decided so to refuse or terminate but the decision is not yet in effect, and
  - (c) believes that the person would pose a significant threat to the safety of members of the public if the person's registration were not suspended.
- (2) The Registrar must, on deciding to suspend a person's registration in respect of any description of driving instruction, give written notice of the decision to the person.
- (3) The decision to suspend takes effect on the giving of the notice.
- (4) No notice may be given under subsection (2) before the notice under section 127(5) or (as the case may be) 128(4) is given but the subsection (2) notice may be included in the section 127(5) or 128(4) notice if the section 127(5) or 128(4) notice is still to be given when the decision to suspend is made.
- (5) A suspension under this section is terminated if—
  - (a) the Registrar decides not to refuse the application for an extension of the person's registration or (as the case may be) decides not to terminate the person's registration,
  - (b) the Registrar decides to refuse the application for an extension of the person's registration or (as the case may be) to terminate the person's registration but the decision has not taken effect and an appeal against the decision is successfully concluded,
  - (c) the Registrar has not decided whether to refuse the application for an extension of the person's registration or (as the case may be) whether to terminate the person's registration and the period of 75 days beginning with the giving of the section 127(5) or 128(4) notice has ended,
  - (d) the person's registration is terminated (whether under section 128 or otherwise), or
  - (e) the Registrar decides to terminate the suspension.
- (6) The Registrar must give written notice to a person of the fact that the person's suspension is terminated as mentioned in subsection (5)(a) to (c) or (e).
- (7) For the purposes of this Part of this Act, the fact that a person's registration is suspended does not prevent the person from being “registered”; and “registration” is to be construed accordingly.”
- (2) In section 123(1)(a) and (b) of the Road Traffic Act 1988 (c. 52) (as substituted by Schedule 6 to the Act of 2006) (prohibition on giving paid driving instruction or carrying on business in the provision of paid driving instruction when unregistered) after “of driving instruction” insert “ and the registration is not suspended ”.
- (3) In section 123A(3) of the Road Traffic Act 1988 (as substituted by Schedule 6 to the Act of 2006) (defence to offence of contravening the prohibition) after “question” insert “ or (as the case may be) that the registration was at that time suspended ”.
- (4) In section 142 of the Road Traffic Act 1988 (as substituted by Schedule 6 to the Act of 2006) (index to Part 5), in the entry in the table for “Registered and registration”, for “Section 123(7)” substitute “ Sections 123(7) and 128ZA(7) ”.

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- (5) In subsection (1) of section 18 of the Road Traffic Offenders Act 1988 (c. 53) (as it has effect with the substitution of paragraphs (a) to (d) of that subsection by Schedule 6 to the Act of 2006) (evidence by certificate as to registration etc. of driving instructors etc.), after paragraph (b) and before the word “or” at the end of the paragraph, insert—
- “(ba) a person's registration was, or was not, suspended,”.

## 2 Compensation in respect of suspension

After section 128ZA of the Road Traffic Act 1988 (c. 52) (as inserted or to be inserted by section 1(1) above) insert—

### “128ZB Compensation in respect of suspension

- (1) The Secretary of State must by regulations make a scheme for the making of payments by the Secretary of State to persons in respect of one or more of the following—
- (a) income losses incurred by them as a result of their registrations being suspended by virtue of section 128ZA,
  - (b) non-income losses so incurred, and
  - (c) any other matters which relate to such a suspension and are provided for in the scheme.
- (2) No payments may be made under a scheme in respect of a person's suspension unless—
- (a) the suspension is terminated because the Registrar decides not to refuse the application for an extension of the person's registration or (as the case may be) decides not to terminate the person's registration,
  - (b) an appeal is successfully concluded against the decision of the Registrar to refuse the application for an extension of the person's registration or (as the case may be) to terminate the person's registration (whether or not the Registrar's decision has taken effect), or
  - (c) any other circumstances provided for in the scheme apply.
- (3) Where the decision of the Registrar to refuse the application for an extension of the person's registration or (as the case may be) to terminate the person's registration has taken effect before an appeal against it is successfully concluded, any payments under a scheme may relate only to the suspension.
- (4) A scheme may, in particular, specify—
- (a) the description or descriptions of income losses, or
  - (b) the description or descriptions of non-income losses,
- in respect of which payments are to be made but need not provide for the making of payments in respect of all income losses or all non-income losses or for the making of payments which correspond to the full amount of any income losses or non-income losses.
- (5) A scheme may also, in particular—
- (a) specify the basis or bases of valuation for determining losses or the person who is to decide their valuation,

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- (b) specify the amounts of payments to be made or the basis or bases on which such amounts are to be calculated,
  - (c) provide for the procedure to be followed (including when claims may be made and the provision of information) in respect of claims under the scheme and for the determination of such claims.
- (6) A person who is aggrieved by a decision of the Secretary of State as to the person's entitlement to payments under a scheme or the amounts of any such payments may appeal to the First-tier Tribunal.
- (7) On an appeal, the First-tier Tribunal may make such order as it considers appropriate.
- (8) If the Tribunal considers that any evidence adduced on an appeal had not been adduced to the Secretary of State before the making of the decision to which the appeal relates, the Tribunal may (instead of making an order under subsection (7)) remit the matter to the Secretary of State for the Secretary of State to reconsider the decision.
- (9) In this section—  
     “income losses” means losses of income, and  
     “non-income losses” means losses other than income losses.”

PROSPECTIVE

### *Exemptions from registration*

#### **3 Exemptions from prohibitions concerning registration**

After section 124(2) of the Road Traffic Act 1988 (c. 52) (as substituted by Schedule 6 to the Road Safety Act 2006 (c. 49)) (exemption from prohibitions imposed by section 123) insert—

- “(3) Circumstances prescribed by virtue of this section may, in particular, consist of, or include, the exercise (whether in individual cases or otherwise) of a discretion by the Registrar or another person.
- (4) Regulations prescribing circumstances of the kind mentioned in subsection (3) may, in particular, make provision about—
- (a) the procedure to be followed in relation to any decision resulting from the exercise of the discretion,
  - (b) the review or revocation of such a decision,
  - (c) an appeal against such a decision,
  - (d) the time when such a decision has effect,
  - (e) the suspension of an exemption in connection with the making of such a decision (including provision corresponding to that made by, or capable of being made under, section 128ZB).
- (5) Regulations made by virtue of this section may, in particular, make provision for the payment of fees.”

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VALID FROM 08/06/2012

*Transitory amendments to existing regime*

**4 Transitory amendments to existing regime**

- (1) Schedule 1 (which contains amendments to Part 5 of the Road Traffic Act 1988 as it has effect without the amendments and repeals made by the Road Safety Act 2006) has effect.
- (2) The enactments listed in Schedule 2 are repealed to the extent specified.

*Supplementary and final provisions*

**5 Consequential provision**

- (1) The Secretary of State may by order make such supplementary, incidental or consequential provision as the Secretary of State considers appropriate for the purposes of this Act or in consequence of this Act.
- (2) The power to make an order under this section—
  - (a) is exercisable by statutory instrument,
  - (b) includes power to make transitional, transitory or saving provision,
  - (c) may, in particular, be exercised by amending, repealing, revoking or otherwise modifying any provision made by or under an enactment (including any Act passed in the same Session as this Act).
- (3) In subsection (2)(c) “enactment” includes an Act of the Scottish Parliament.
- (4) Subject to subsection (5), an instrument containing an order under this section may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (5) An instrument containing an order under this section which does not amend or repeal a provision of a public general Act or an Act of the Scottish Parliament is subject to annulment in pursuance of a resolution of either House of Parliament.

**6 Transitional, transitory and saving provision**

- (1) The Secretary of State may by order made by statutory instrument make such transitional, transitory or saving provision as the Secretary of State considers appropriate in connection with the coming into force of any provision of this Act.
- (2) An order under subsection (1) may, in particular, take account of any amendment or repeal made, or to be made, by Schedule 6 to the Road Safety Act 2006 (c. 49).

**7 Short title, commencement and extent**

- (1) This Act may be cited as the Driving Instruction (Suspension and Exemption Powers) Act 2009.

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- (2) Sections 5 and 6 and this section come into force on the day on which this Act is passed.
- (3) Sections 1 to 4 and Schedules 1 and 2 come into force on such day as the Secretary of State may by order made by statutory instrument appoint; and different days may be appointed for different purposes.
- (4) This Act extends only to England and Wales and Scotland.

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## SCHEDULES

### SCHEDULE 1

Section 4(1)

#### TRANSITORY AMENDMENTS TO EXISTING REGIME

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PROSPECTIVE

### SCHEDULE 2

Section 4(2)

#### REPEALS

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