

DRIVING INSTRUCTION (SUSPENSION AND EXEMPTION POWERS) ACT 2009

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Driving Instruction (Suspension and Exemption Powers) Act 2009 (the Act) which received Royal Assent on 12th November 2009. They have been prepared by the Department for Transport in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

BACKGROUND

3. The provision of paid instruction in the driving of a motor car has been a regulated activity for around forty years. The relevant legislative provisions are set out in Part V of the Road Traffic Act 1988 (the RTA), and in regulations dealing with details such as the content of qualifying tests and the level of fees to be charged. The Road Safety Act 2006 (the RSA) introduced a number of changes to these arrangements including scope for the regulation of instruction in vehicles other than motor cars. These arrangements (set out in section 42 of, and Schedule 6 to, the RSA) have not been commenced and no date has yet been set for this.
4. Under the RTA, as it currently stands, only Approved Driving Instructors (ADIs) and licence-holders may give paid instruction in driving a car. ADIs are required to have their names entered on the Register which is administered by the Registrar, an official of the Driving Standards Agency (DSA). In order to gain entry to the Register, instructors must pass a series of examinations and be “fit and proper” persons. A licensing scheme under section 129 of the RTA enables partially-qualified instructors to gain experience in order to prepare for the final examination in the qualifying process (the test of instructional ability). When the RSA changes are commenced, it will be possible for regulations to be made prescribing circumstances where the requirement to be registered shall not apply in relation to driving instruction. In particular, it will be possible for regulations to exempt persons from the requirement to be registered for the purpose of gaining experience of giving instruction. Currently, any person giving paid instruction in the driving of a motor car whose name is not on the Register, or who is not licensed under section 129 of the RTA, is guilty of an offence.

5. Under the RTA, the Registrar has a power to remove a person's name from the Register if the Registrar is satisfied that they have ceased to meet certain conditions including, among other things, ceasing to be a "fit and proper" person, failing to pass a periodic test of competence in instruction or being disqualified from driving. Before an ADI's name can be removed from the Register, however, they must be given notice that the Registrar is considering this and of the relevant grounds. They then have 28 days to submit representations. If, having considered any representations, the Registrar is still minded to remove the ADI's name from the Register, then the Registrar has to give notice of this decision. A minimum of a further 14 days must then elapse before the decision can take effect. There are then further rights of appeal to the Transport Tribunal.
6. In practice, allowing for time to consider representations, it therefore takes a minimum of around 45 days between the Registrar notifying the ADI that the Registrar is minded to remove that ADI's name from the Register, and that removal taking effect. In the vast majority of cases this procedure causes no difficulty. However, there is a concern that in serious cases there is a need for more immediate action, on an interim basis, to prevent an ADI continuing to give instruction during this period. There have been cases of inappropriate behaviour towards pupils by ADIs where the Registrar was unable to intervene quickly and effectively. In one case, an ADI who had been convicted of a sexual offence involving a pupil was able to continue giving instruction while the deregistration process continued.
7. The Act addresses this concern by enabling the Registrar to suspend an ADI's registration at the same time as informing the ADI that the Registrar is minded to remove that ADI's name from the Register. The Act also allows the Registrar to suspend registration where the Registrar intends to refuse an ADI's application to extend their registration. In either case, the effect of a suspension is immediately to prevent the ADI from giving paid instruction. However, the Registrar may suspend an ADI's registration only if the Registrar also believes that the ADI would pose a significant threat to the safety of members of the public if the ADI's registration were not suspended.
8. The power to suspend is therefore available only in the most serious cases; for example, where an ADI has been convicted of a serious criminal offence, such as a sexual or violent offence, or where the ADI has repeatedly failed to pass periodic tests of their instructional ability, or their ability and fitness to drive, or they have achieved a very low mark in such tests.
9. The Act also places an obligation on the Secretary of State to introduce a compensation scheme by regulation. This will, in particular, apply where suspension does not ultimately lead to removal of the ADI's name from the Register, or where such removal is overturned as a result of an appeal. In those circumstances, the ADI will be entitled to claim for lost income and other losses resulting from, and occurring in, the period of suspension.

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STRUCTURE

10. The sections and schedules are grouped as follows:
- Sections 1-7: Suspension of registration and introduction of compensation arrangements under provisions in the RTA as amended by the RSA
 - Schedule 1: Suspension of registration and introduction of compensation arrangements under provisions in the RTA as it stands without the amendments made by the RSA
 - Schedule 2: Repeals

TERRITORIAL EXTENT

11. The provisions of the Act extend to England and Wales and Scotland (see section 7). The Act amends the RTA both as it currently stands, and also as it is amended by the RSA when section 42 of that Act is commenced. The relevant provisions of the RTA, both with and without those amendments, extend to Great Britain only (see section 197(3) of the RTA and section 62(4) of the RSA).

COMMENTARY ON SECTIONS AND SCHEDULES

Note on abbreviations

12. In the following notes the following abbreviations are used:-

“the DSA” means the Driving Standards Agency.

“the RTA” means, in relation to sections 1 to 3, the Road Traffic Act 1988 as amended by section 42 and Schedule 6 of the RSA and, in relation to other parts of the Act, the Road Traffic Act 1988 prior to amendment by section 42 and Schedule 6 of the RSA.

“the RSA” means the Road Safety Act 2006.

“the Register” means the Register of Approved Driving Instructors.

“the Registrar” means the Registrar of Approved Driving Instructors.

Section 1: Suspension of registration

13. Subsection (1) inserts new section 128ZA into the RTA to enable the Registrar to suspend a person’s registration to give driving instruction where the Registrar believes that person to present a significant threat to the safety of members of the public. The suspension must be associated with proceedings leading to, or potentially leading to, either the termination of the person’s registration or the refusal of the person’s application to extend their registration. The notice may therefore be given only if the Registrar is considering either terminating that registration or refusing an application to extend that registration, or if the Registrar has already decided so to terminate or

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refuse. The notice of suspension may only be given together with, or subsequent to, the notice that the Registrar is either minded to terminate the person's registration or to refuse the ADI's application to extend their registration.

14. *Subsections (2) and (3)* of the new section 128ZA provide for written notice to be given of the suspension and for the suspension to take effect on the giving of the notice.
15. Under *subsection (4)* of the new section 128ZA, notice of suspension cannot be given unless notice has already been given that the Registrar is considering either termination of the person's registration or refusal of the person's application to extend their registration, but the two notices may be given at the same time.
16. *Subsection (5)* of the new section 128ZA sets out the circumstances in which a suspension imposed by the Registrar is terminated. For example, the suspension will automatically end if the Registrar fails to make a decision on whether to terminate the person's registration or refuse their application to extend their registration within 75 days of the Registrar giving notice of being minded so to terminate or refuse.
17. *Subsection (6)* of the new section 128ZA requires the Registrar to inform the affected person of the termination of a suspension in writing as soon as practicable.
18. Under *subsection (7)* of the new section 128ZA a person remains registered during the period of suspension and that person is therefore treated as a registered person for the purposes of Part V of the RTA.
19. Subsection (2) of section 1 of the Act amends section 123(1) of the RTA to impose an additional requirement upon persons giving paid driving instruction, or carrying on business in the provision of paid driving instruction, so that not only must they be registered but their registration must not be suspended. It is an offence to give instruction in contravention of section 123(1) (see section 123A(1) RTA).
20. Subsection (3) amends section 123A(3) of the RTA so as to provide for a defence in proceedings where the person providing driving instruction, their employer, or franchiser, did not know and had no reasonable cause to believe that the registration of the person giving instruction was suspended.
21. Subsection (4) is a consequential amendment to section 142 of the RTA.
22. Subsection (5) is a consequential amendment to section 18(1) of Road Traffic Offenders Act 1988.

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Section 2: Compensation in respect of suspension

23. Section 2 inserts new section 128ZB into the RTA.
24. *Subsection (1)* of the new section 128ZB provides that the Secretary of State must introduce a compensation scheme through regulations. A scheme may, in particular, cover income and non-income losses incurred by a person whose registration is suspended by virtue of section 128ZA.
25. *Subsection (2)* limits the circumstances in which compensation may be payable under the scheme.
26. *Subsection (3)* provides that, where the Registrar's decision to terminate the person's registration, or to refuse the person's application for an extension of their registration, is overturned on appeal, any compensation can only relate to the period of suspension.
27. *Subsection (4)* provides that the compensation scheme may specify descriptions of income and non-income losses but does not oblige the scheme to make payments in respect of all such losses or the full amount of such losses.
28. *Subsection (5)* provides that a scheme may specify how losses will be valued, the amounts to be paid in compensation or how they will be calculated. The scheme may also provide procedures for making claims and their determination.
29. *Subsection (6)* provides for the right of appeal to the First-tier Tribunal of a person aggrieved by a decision of the Secretary of State regarding entitlement to compensation payments or the amounts of any such payments.
30. *Subsection (7)* provides, in the case of appeal, for the First-tier Tribunal to make such order as it considers appropriate.
31. *Subsection (8)* provides that the First-tier Tribunal may refer the decision back to the Secretary of State for reconsideration if evidence emerges during the course of the appeal that has not previously been made available to the Secretary of State.
32. *Subsection (9)* defines "income losses" and "non-income losses".

Section 3: Exemptions from prohibitions concerning registration

33. Section 3 inserts new *subsections (3), (4) and (5)* into section 124 of the RTA.
34. Section 124(1) of the RTA provides a power to make regulations under which circumstances can be prescribed where the requirement to be registered to give paid driving instruction shall not apply. Section 124(2) provides that those circumstances may, in particular, include where the purpose is to enable persons to gain experience in driving instruction.

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35. The new *section 124(3)* of the RTA, added by section 3 of the Act, provides that the circumstances which can be prescribed under section 124 can include the exercise of a discretion by the Registrar or another person. An exemption from the requirement to be registered, whether in individual cases or otherwise, could therefore be made dependent on a discretionary decision by the Registrar or another person.
36. The new *section 124(4)* of the RTA provides that regulations prescribing the circumstances in which the requirement to be registered to give paid driving instruction shall not apply may also provide for–
- The procedure to be followed in relation to any decision resulting from the exercise of the discretion provided for in new section 124(3) of the RTA;
 - The review or revocation of such a decision;
 - An appeal in respect of such a decision;
 - The time when such a decision has effect; and
 - The suspension of exemptions (including provisions akin to those made by or under section 128ZB).
37. The new *section 124(5)* of the RTA provides that any regulations prescribing the circumstances in which the requirement to be registered to give paid driving instruction shall not apply may also make provision for the payment of fees. Such regulations may, for instance, oblige the Registrar to decide applications from individual instructors for an exemption, which may cause the DSA additional administrative costs comparable to those relating to licence applications under section 129 of the RTA 1988 (as it has effect prior to amendment by section 42 and Schedule 6 of the RSA), for which a fee is currently chargeable.

Section 4: Transitory amendments to existing regime

38. Subsection (1) of section 4 introduces Schedule 1 making transitory changes to the RTA without the amendments and repeals introduced by the RSA.
39. Subsection (2) introduces Schedule 2 which lists repeals that would remove the transitory amendments to the existing regime and that are intended to be made at the same time that the amendments and repeals made by the RSA and sections 1 to 3 of the Act are commenced.

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Section 5: Consequential Provision

40. Subsection (1) enables the Secretary of State to make supplementary, incidental or consequential provision in connection with the Act.
41. Subsections (2) and (3) provide that an order under this section shall be made by statutory instrument, may include transitional, transitory or saving provision, may amend, repeal or revoke or otherwise modify any provision made by or under an enactment (including any Act passed in the same session as this Act and an Act of the Scottish Parliament).
42. Subsection (4) provides that, subject to subsection (5), an instrument may be made under section 5 only if a draft of the instrument has been laid before, and approved by, a resolution of each House of Parliament.
43. Subsection (5) provides that an instrument made under section 5 which does not amend or repeal an Act or an Act of the Scottish Parliament is subject to annulment by either House of Parliament.

Section 6: Power to make transitional, transitory and saving provision

44. Section 6 enables the Secretary of State to make transitional, transitory or saving provision by statutory instrument in connection with the coming into force of any provision of the Act.

Section 7: Short title, commencement and extent

45. Section 7 gives the short title of the Act; states that sections 5, 6 and 7 will come into effect on the date that the Act is passed; provides for sections 1 to 4 and Schedules 1 and 2 to come into force on a date (or dates) appointed by the Secretary of State by order and defines the territorial extent of the Act as being only England and Wales and Scotland.

Schedule 1

46. Schedule 1 makes provision for necessary transitory amendments to the current arrangements in the RTA, to apply until section 42 of RSA is commenced.

Suspension of registration

47. Paragraph 1 of Schedule 1 inserts new *subsections (7A) to (7G)* into section 128 of the RTA.
48. New *section 128(7A)* gives the Registrar power to suspend a person's registration to give driving instruction where the Registrar believes that person presents a significant threat to the safety of members of the public, and requires that the suspension must be associated with proceedings leading to, or potentially leading to, the removal of the person's name from the Register. Notice of suspension may only be given if the Registrar is already considering removing that person's name from the Register and has given notice of this or, having given such notice, has already decided so to remove.

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49. New *sections 128(7B) and 128(7C)* require that notice of suspension must be given by the Registrar in writing and takes immediate effect.
50. New *section 128(7D)* prevents notice of suspension being given before the Registrar gives notice of the potential removal of that person's name from the Register, but the two notices may be given at the same time.
51. New *section 128(7E)* sets out the circumstances in which a suspension imposed by the Registrar is terminated. In particular, the suspension will automatically terminate if the Registrar fails to make a decision on whether to remove the person's name from the Register within 75 days of giving the notice that the Registrar is minded to remove it.
52. New *section 128(7F)* requires the Registrar to inform the affected person of the termination of a suspension in writing.
53. New *section 128(7G)* provides that a person's name may remain on the Register during the period of suspension.
54. Paragraph 2 of Schedule 1 amends section 123 of the RTA to impose an additional requirement upon persons giving paid driving instruction, so that not only must they be registered but their registration must also not be suspended. It also provides for a defence in proceedings for offences under section 123(4) where the person giving instruction, or their employer, had no reasonable cause to believe that a registration was suspended.
55. Paragraph 3 of Schedule 1 amends section 127 of the RTA, to permit the Registrar to suspend a person's registration to give driving instruction where that person has submitted an application to extend their registration and the Registrar is minded to refuse that application. This provision operates by glossing new sections 128(7A) to (7G) and 131A (which would be inserted into the RTA by the Act) so that they work in the context of a refusal to grant an application to extend registration.
56. Paragraph 4 of Schedule 1 makes a consequential amendment to section 18(1) of the Road Traffic Offenders Act 1988.

Suspension of licences

57. Paragraph 5 inserts new *subsections (7) to (13)* into section 130 of the RTA.
58. New *section 130(7)* provides for the Registrar to suspend a person's licence where the Registrar believes that person presents a significant threat to the safety of members of the public and requires that the suspension must be associated with proceedings leading to, or potentially leading to, the revocation of the licence. The notice may only therefore be given if the Registrar is already considering revoking the licence and has given notice of this or, having given such notice, has already decided to revoke.

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59. New *sections 130(8) and 130(9)* require that notice of suspension must be given by the Registrar in writing and that suspension takes immediate effect.
60. New *section 130(10)* prevents notice of suspension being given before the Registrar gives notice of the potential revocation of the licence, but the two notices may be given at the same time.
61. New *section 130(11)* sets out the circumstances in which a suspension imposed by the Registrar is terminated. In particular, the suspension will automatically terminate if the Registrar fails to make a decision on whether to revoke the person's licence within 75 days of giving the notice of potential revocation.
62. New *section 130(12)* requires the Registrar to inform the affected person of the termination of a suspension in writing.
63. Under new *section 130(13)*, where a person's licence is suspended, that person may continue to be a licence-holder.
64. Paragraph 6 of Schedule 1 amends section 129 of the RTA, to permit the Registrar to suspend a person's licence where that person has submitted an application to renew their licence and the Registrar is minded to refuse that application. This provision operates by glossing new sections 130(7) to (13) and 131A (which would be inserted into the RTA by the Act) so that they work in the context of a refusal to grant an application to renew a licence.

Compensation in respect of suspension

65. Paragraph 7 inserts new section 131A into the RTA to require the Secretary of State to introduce a compensation scheme.
66. *Subsection (1)* of the new section 131A provides that the Secretary of State must introduce a compensation scheme by regulation in respect of income and non-income losses and any other matters which relate to such a suspension and are provided for in the scheme. The losses must be incurred by persons as a result of their registration or licence being suspended by virtue of *section 128(7A) to (7G)* or (as the case may be) *130(7) to (13)*. (This includes the case where a suspension is imposed in the context of an application to extend registration or renew a licence. In such a case, the suspension is imposed by virtue of *section 128(7A) to (7G)* or *130(7) to (13)* as applied by the glosses referred to in paragraphs 55 and 64 of these notes.)
67. *Subsection (2)* of the new section 131A limits the circumstances in which compensation payments may be made under the scheme.

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68. *Subsection (3)* of the new section 131A provides that, where the Registrar's decision to remove the person's name from the Register or revoke their licence is overturned on appeal, any compensation may relate only to the period of suspension.
69. *Subsection (4)* of the new section 131A requires the compensation scheme to specify descriptions of income and non-income losses but does not oblige the scheme to make payments in respect of all such losses or the full amount of any losses.
70. *Subsection (5)* of the new section 131A allows the scheme to specify how losses will be valued and to specify the amounts to be paid in compensation or how they will be calculated. The scheme may also provide procedures for making claims and their determination.
71. *Subsection (6)* of the new section 131A provides for the right of appeal to the First-tier Tribunal of a person aggrieved by a decision of the Secretary of State regarding entitlement to payments or the amounts of any such payments.
72. *Subsection (7)* of the new section 131A provides, in the case of appeal, for the First-tier Tribunal to make such order as it considers appropriate.
73. *Subsection (8)* of the new section 131A provides that the First-tier Tribunal may refer the decision back to the Secretary of State for reconsideration if evidence emerges during the course of the appeal that had not previously been made available to the Secretary of State.
74. *Subsection (9)* of the new section 131A defines income and non-income losses.

Schedule 2

75. Schedule 2 lists repeals.

COMMENCEMENT

76. Sections 5, 6 and 7 of the Act come into force on the day the Act is enacted. The remaining provisions of the Act will come into force by order.

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HANSARD REFERENCES

The following table sets out the dates and Hansard references for each stage of the Act's passage through Parliament.

<i>Stage</i>	<i>Date</i>	<i>Hansard Reference</i>
House of Commons		
Introduction	25 February 2009	Vol. 488 Column 285
Second Reading	15 May 2009	Vol. 492 Column 1178
Money Resolution	15 June 2009	Vol. 494 Column 133
Committee	17 June 2009	Hansard – Public Bill Committee Column 3
Report	26 June 2009	Vol. 494 Column 1051
Third Reading	26 June 2009	Vol. 494 Column 1051
House of Lords		
Introduction	29 June 2009	Vol. 712 Column 10
Second Reading	10 July 2009	Vol. 712 Column 918
Committee (order of commitment discharged)	20 October 2009	Vol. 713 Column 566
Third Reading	29 October 2009	Vol. 713 Column 1278
Royal Assent	12 November 2009	Commons: Vol. 499 Column 418 Lords: Vol. 714 Column 918

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