

ROAD SAFETY ACT 2006

EXPLANATORY NOTES

DRIVING STANDARDS

Section 36: Driving tests

116. This section amends sections 89 (driving tests) and 91 (repayment of test fees) of the RTA.
117. *Subsection (2)(a)* amends section 89(3)(regulations about nature of tests) so as to allow the Secretary of State to provide, by regulations, for more flexible arrangements for the booking, cancellation and rearrangement of test appointments. *Subsection 2(b)* amends section 89(3) so as to make more explicit the scope of the Secretary of State's regulation making powers relating to the appointment of driving examiners and to permit him to make reasonable charges in respect of such appointments. *Subsection (2)(c)* allows the Secretary of State, again by regulations, to require the driving test candidate to surrender his licence to the examiner in prescribed circumstances (for example, if it does not pass the necessary security checks).
118. *Subsection (3)* amends section 89(4) (provision that may be included in regulations) so as to enable the Secretary of State, by regulation, to require inspection and certification of prescribed test vehicles. (An inspection and certification process is needed to evidence compliance with the weight requirements for large goods vehicles and large trailers used for driving tests set out in Commission Directive [2000/56/EC](#)). *Subsection (3)* also reformulates the fees provision contained in section 89(4)(b) so as to enable the Secretary of State, by regulation, to charge a reasonable fee for or in connection with the test (for example, the review of theory test results) and for any inspection of a vehicle which may be required by regulations.
119. *Subsection (4)* amends section 89(5) (driving tests in parts) by omitting paragraph (b), the contents of which are now dealt with in new *subsection (5ZA)*.
120. *Subsection (5)* inserts new *subsection (5ZA)* into section 89. This provides that regulation-making provisions in section 89(3)(b) may permit the Secretary of State to supply certificates evidencing the results of driving tests to persons authorised to conduct such tests and to charge reasonable fees in respect of the exercise of any functions conferred or imposed on the Secretary of State by regulations made under section 89(3)(b).
121. *Subsection (6)* amends section 91 so as to provide for partial refunds of fees for driving tests.

Section 37: Disqualification until test is passed

122. This section amends section 36 of the RTOA (duty of court to order disqualification until test is passed) by substituting a new version of the definition of "appropriate driving test". The new definition will enable the Secretary of State to prescribe by regulations when the appropriate driving test is an extended test. The section also amends section 36 of the RTOA so as to require the Secretary of State to consult

with such representative organisations as he thinks fit before making an order under section 36(3). It also amends section 173(2) of the RTA (forgery of documents etc.) to include reference to documents produced as evidence of the passing of an appropriate driving test for the purposes of section 36 of the RTOA.

Section 38: Granting of full licence

123. *Subsection (1)* of this section amends section 89(1) of the RTA (licence not to be granted unless conditions satisfied) so as to allow the Secretary of State to prescribe the period within which, or time at which, a person applying for a licence must have passed the relevant driving test.
124. *Subsection (2)* of this section inserts a new *subsection (1ZA)* into section 97 of the RTA (grant of licences). The new subsection permits the Secretary of State, by regulations, to grant a licence subject to prescribed conditions that are effective for a prescribed period or until the happening of a prescribed event.
125. *Subsection (3)* of this section extends section 98(1)(c) of the RTA (provisional licence to specify conditions subject to which it is granted) so as to enable the Secretary of State to specify any conditions subject to which full licences are granted.
126. The power to impose conditions on licences would be used, for example, in relation to a driver who had previously been disqualified from driving for a drink driving offence, but had agreed to a court order allowing him to participate in an alcohol ignition interlock programme (*as provided for by section 15*). The condition would require the driver to drive only in accordance with the alcohol ignition interlock programme.

Section 39: Compulsory surrender of old-form licences

127. **Section 39** inserts a new section 98A into the RTA. This new section contains an order making power that provides for the compulsory surrender of old-form driving licences.
128. Although the first licences to be surrendered are likely to be paper ones, a recall of first generation photocard format driving licences may be necessary in the future. The section therefore provides that an order made under this new section may specify as to the description of licences to be surrendered:
 - licences which are not in the form of a photocard, or
 - licences in the form of a photo-card of a description no longer specified by the Secretary of State as a form in which licences are granted.
129. The order to be made under the new section will provide that a new licence be granted to every holder of a licence surrendered who pays such fee (if any) which may be charged for the issue of the replacement licences and who provides the Secretary of State with such evidence or further evidence as the Secretary of State may require (which may include a photograph which is a current likeness).
130. The order will provide that anyone failing, without reasonable excuse, to comply with any requirement imposed by the order to surrender a licence and its counterpart will be guilty of an offence punishable on summary conviction with a fine not exceeding level 3 on the standard scale (£1,000). Driving entitlement will continue until the date on which the original licence would have expired had it not been surrendered.

Section 40: Fee for renewal of photocard licence and issue of certain alternative licences

131. *Subsection (1)* of section 40 amends subsection (7) of section 99 of the RTA and inserts a new sub section (7ZA) into that section that will enable the Secretary of State to charge such fee as may be prescribed for the renewal of a photocard licence in pursuance of subsection (2A). Subsection (2A) of section 99 of the RTA requires a photocard licence

to be renewed every ten years. Section 99(7) currently specifies that photocard driving licences granted after the ten year renewal period set out in subsection (2A) must be issued free of charge.

132. *Subsection (2)* of section 40 amends subsection (2)(c) and (3) of section 117A (disqualification etc. of holders of Community licences: issue of alternative licences) of the RTA. The amendments relate to the holder of a LGV (large goods vehicle) Community licence or PCV (passenger-carrying vehicle) Community licence who is normally resident in Great Britain. The amendments mean that where the Secretary of State has ordered a holder of a LGV Community licence or PCV Community licence to be disqualified from driving certain vehicles, he may now charge such fee as may be prescribed for the issue of a British licence authorising him to drive other vehicles for which he is not disqualified.
133. The Secretary of State has the power to charge such fee (if any) as may be prescribed in respect of issuing a GB licence holder with a licence authorising him to drive other vehicles for which he is not disqualified (section 118(4) of the RTA) and so this amendment will remove the anomaly which currently exists between GB licence holders and resident Community licence holders.

Section 41: Driver training

134. *Section 99ZC* of the RTA (Driver training courses: supplementary) is a regulation-making power. *Subsection (2)* of this section amends paragraphs (b) and (c) of section 99ZC(1) so as to include express provision regarding those persons giving instruction on compulsory driver training courses. *Subsection (3)* will enable the Secretary of State, by regulations, to make available information about persons providing, or giving instruction on, driver training courses.
135. *Subsection (4)* substitutes a new paragraph (ff) of section 173(2) of the RTA (forgery of documents etc.) so that it applies to a document evidencing the successful completion of a compulsory driver training course. *Subsection (5)* amends section 174(1) of the RTA (false statements) so that a person who knowingly makes a false statement for the purpose of obtaining a document evidencing the successful completion of a compulsory driver training course is guilty of an offence.

Section 42: Driving instruction

136. *Section 42* introduces Schedule 6 which amends the law relating to paid driving instruction.

Schedule 6

137. Paid instruction in the driving of motor cars is regulated by Part 5 of the RTA ("motor car" being defined in section 141A, a provision which is replaced by a new provision in the Act). Schedule 6 amends the provisions of that Part in a number of ways, by substituting new provisions for existing ones, inserting new sections and amending existing provisions. The changes are set out in more detail below.
138. *Paragraph 2* substitutes new provisions for section 123 as follows:

New section 123: Requirement of registration

139. *Subsection (1)* provides that driving instructors have to be registered if they give paid instruction of any prescribed description. This enables the existing provision regarding paid driving instruction in the driving of motor cars to be extended, by regulation, to other motor vehicle types in addition to motor cars, for example, driving instruction in respect of lorries, buses and motorcycles. The subsection furthermore extends the current registration requirement by requiring not only those persons who give paid instruction but also those who carry on a business of providing paid driving instruction

of a prescribed description (such as franchise operations), to be registered. "Driving instruction" is accordingly given a wider meaning by *subsection (3)* and *subsections (5)* and *(6)* make provision about what "paid instruction" means.

140. *Subsection (2)* sets out the requirement for all persons giving paid driving instruction or carrying on business in the provision of paid driving instruction to display evidence of their registration as required by regulation e.g. in a classroom.
141. *Subsection (4)* provides that regulations prescribing a description of driving instruction may describe it by reference to the class of motor vehicle (for example, bus or lorry), the person to whom the instruction is given (for example, provisional or full licence holder) and the nature of the instruction or where and how it is given (for example, on or off-road). Currently only instruction given in a motor car is caught by the provisions of Part 5 of the RTA.

New section 123A: Paid driving instruction: offences

142. *Subsection (1)* makes it an offence to give driving instruction in contravention of section 123 and also provides that employers and franchisors commit an offence where driving instruction is given in contravention of section 123 by their employees or franchisees. *Subsection (3)* provides a defence for persons able to prove that they did not know and had no reasonable cause to believe that they were not registered or, in the case of employers and franchisors, that the person giving instruction was not registered. *Subsection (2)* makes it an offence to carry on business in the provision of driving instruction in contravention of section 123(1)(b).
143. *Subsection (4)* makes it an offence to contravene section 123(2) of the RTA (to provide paid driving instruction or carry on business in the provision of paid driving instruction without meeting the requirements regarding the display of evidence of registration).
144. [Paragraph 3](#) substitutes a new section 124 (Exemption from prohibitions imposed by section 123) making provision for exemptions from the requirement of registration.
145. [Paragraph 4](#) substitutes new provisions for section 125 (register of approved instructors) enabling the Secretary of State, by regulation, to establish and maintain a register for the purposes of Part 5 of the RTA.
146. [Paragraph 5](#) inserts a new section 125ZA (Conditions of registration) as follows.
147. *Subsection (1)* provides that the Registrar must register a person who applies to be registered in respect of a description of driving instruction if he satisfies the Registrar that conditions prescribed under the subsection (for example, conditions requiring the persons to have passed certain examinations) are fulfilled.
148. *Subsection (3)* provides that a person may be registered subject to fulfilling conditions prescribed under the subsection for so long as he continues to be registered and *subsection (7)* provides that regulations may include provision to exempt persons from any condition in prescribed circumstances.
149. [Paragraph 6](#) amends section 125A (registration of disabled persons). Subsections (2) to (5) of section 125 and section 125ZA of the RTA do not apply to disabled instructors and these amendments to section 125A ensure that the provisions relating to the registration of disabled persons are in line with the amendments made by new section 125 (register) and new section 125ZA (conditions of registration).
150. [Paragraph 7](#) amends section 125B (provisions supplementary to section 125A). It provides that regulations may make provision for prescribed persons to be exempt from the holding of a current emergency control certificate (as in existing section 125B(3)).
151. [Paragraph 8](#) substitutes a new section 126 (Duration of registration). Where a person whose registration has been terminated applies under section 125 of the RTA to be registered again he is required to show again that he fulfils such of the conditions

prescribed under section 125ZA(1) as may be prescribed or, if a registered disabled instructor, such of the conditions prescribed under 125A(5) as may be prescribed.

152. **Paragraph 9** amends section 127 (extension of duration of registration), substituting new *subsections (1) to (4)*. It provides that the continued registration of a person by virtue of an extension under this section may be made subject to the conditions mentioned in section 125A in the case of a registered disabled instructor and in any other case the conditions mentioned in section 125ZA.
153. **Paragraph 10** substitutes new provisions for the current section 128 (removal of names from the register):
154. New section 128 (Termination of registration by Registrar) sets out the Registrar's powers to terminate a person's registration if he is satisfied that any relevant prescribed condition has not been complied with. (A "relevant prescribed condition" means, in the case of a registered disabled instructor, a condition prescribed under section 125A(7) of the RTA and, in any other case, a condition prescribed under section 125ZA(3) of the RTA.) There are provisions as to the giving of notice to the person concerned and a requirement that the Registrar must take into account any representations made by that person before exercising his powers.
155. **Paragraph 11** inserts a new section 128A (Power to give direction as to further applications) into Part 5. This empowers the Registrar to impose a rehabilitation period (i.e. a period during which no further application for registration will be considered) thereby preventing persons whose registration has been terminated from making futile applications for re-registration or an extension of an existing registration.
156. **Paragraphs 12 and 14.** Paragraph 12 removes sections 129 and 130 (licences for giving instruction so as to obtain practical experience) from Part 5 of the RTA. Under the current law, a person may obtain a licence to give instruction prior to applying for full registration. Such licences last for 6 months subject to a limited right of renewal. This system has proved unsatisfactory as a means of training driving instructors. Instead regulations under section 124 will make provision for persons training to be driving instructors to be exempt from the requirements to be registered. There are also to be new arrangements as to examinations and training.
157. These are contained in paragraph 14 which makes major changes to the training and examination systems. It replaces the current sections 132 (examinations) and 133 (review of examinations) of the RTA and inserts a new section 133ZA (Training), to make the system more flexible.
158. New section 132 (Examinations) contains revised powers enabling the Secretary of State to make regulations with respect to:
 - the nature of, and administrative arrangements for, examinations of fitness and ability to give driving instruction,
 - persons who may conduct them
 - evidence of the results of examinations, and
 - the making available of information about examination results.
159. New section 133 (Review of examinations etc.) provides for a person to apply to a Magistrates Court (or in Scotland the sheriff) to determine whether a relevant instructor examination or part of such examination was properly conducted.

New section 133ZA (Training)

160. *Subsections (1), (2), (4) and (5)* enable the Secretary of State, by regulations:

*These notes refer to the Road Safety Act 2006 (c.49)
which received Royal Assent on 8 November 2006*

- to make provision about instructors' training courses, persons providing the courses, and those giving instruction as part of that training,
 - to require a person to successfully complete training in accordance with the regulations before being permitted to take any part of an examination, to become registered or to have his registration extended,
 - to provide for the setting of maximum charges for persons undergoing such training, and
 - to make available information about persons providing training and those giving instruction as part of that training.
161. *Subsection (3)* provides for exemptions to the general requirements and *subsection (6)* allows the Secretary of State to charge reasonable fees in respect of the exercise of any function conferred or imposed on him by the regulations.
162. It will be possible under these provisions for the Secretary of State to control better the giving of paid instruction by requiring persons giving it to undergo training.
163. [Paragraph 13](#) makes a number of amendments to section 131 (appeals), in particular a provision for appeal to the Transport Tribunal where the Registrar has imposed a rehabilitation period.
164. [Paragraph 19](#) substitutes a new section 134 (power to alter registration period). It enables the Secretary of State, by regulations, to make changes in the registration period, allowing for greater flexibility and to make changes as to the maximum rehabilitation period that may be imposed.
165. [Paragraph 20](#) substitutes a new section 135 (Evidence of registration). This contains a regulation-making power regarding those items or titles that may be issued or used as evidence of a person's registration. It makes it an offence for a non-registered person to display such items or use such titles. It is also an offence for a person carrying on business in the provision of driving instruction to use such titles in relation to employees or franchisees who are not registered or to issue misleading advertisements or invitations as to the extent to which employees or franchisees are registered.
166. [Paragraph 25](#) substitutes new interpretation provisions for Part 5 of the RTA as follows:

New section 141A (Interpretation)

167. *Subsection (1)* describes the ways in which persons may carry on the business of providing driving instruction. *Subsections (2) and (3)* define what is meant by a "driving instruction franchise", "franchisor" and "franchisee", in relation to driving instruction businesses.
168. *Subsections (4) and (5)* make incidental provision.
169. [Paragraphs 15 to 18, 21 to 24 and 26 to 33](#) make minor and consequential amendments.

Section 43: Tests: approved assistants

170. This section inserts new section 162A (approved test assistants) into the RTA. This gives the Secretary of State power to provide for a statutory scheme regulating the use of persons who may assist test candidates that have difficulty in hearing, understanding or responding to instructions or questions.
171. *Subsection (1)* enables regulations to be made permitting any person wishing to be accompanied at a relevant test by another person (a "test assistant") if he submits himself for the relevant test in any circumstances in which the Secretary of State considers it appropriate and if the test assistant is approved in accordance with regulations made under this section to accompany people at relevant tests in such circumstances.

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172. *Subsection (2)* sets out examples of the circumstances in which the Secretary of State considers it appropriate that a person should be entitled to be accompanied by a test assistant at a relevant test.
173. *Subsection (3)* provides that the regulations may include, in particular, provision with respect to the administrative arrangements for the approval of test assistants, the conditions that may be imposed with respect to their appointment and continued approval, an appeals procedure, the circumstances in which a test assistant may not act as such, the evidencing by persons of their status as approved test assistants and the publication of information about approved test assistants. The subsection also provides that the regulations may provide for the charging of fees in respect of applications for approval, or of approvals, (or both) of fees of such amounts as are prescribed.
174. *Subsection (4)* provides that the regulations may make different provision in relation to different cases.
175. The relevant tests (specified in *subsection (5)*) are the theory and practical parts of driving tests (including those taken in order to discharge disqualification until test is passed), the examination of fitness and ability to give driving instruction and the emergency control assessment taken by prospective disabled instructors.