

Title: Compensation Arrangements - Driving Instruction Suspension and Exemption Scheme

IA No: DFT00014

Lead department or agency:

Driving Standards Agency

Other departments or agencies:

Impact Assessment (IA)

Date: 01/01/2011

Stage: Final

Source of intervention: Domestic

Type of measure: Secondary legislation

Contact for enquiries:

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Summary: Intervention and Options

RPC Opinion: GREEN

Cost of Preferred (or more likely) Option

Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, One-Out?	Measure qualifies as Zero Net Cost
£m	£m	£m	No	Zero Net Cost

What is the problem under consideration? Why is government intervention necessary?

The Driving Instruction (Suspension and Exemption Powers) Act 2009 (the 2009 Act) introduces a new power for the Registrar of Approved Driving Instructors (ADI) to suspend the registration of driving instructors who pose a significant danger to the public. In a small number of cases, an instructor's registration may not be permanently revoked. The Act requires that a compensation scheme is established to reimburse such instructors for losses incurred as a result of the suspension. As the compensation scheme must be of a statutory nature, government intervention is required.

What are the policy objectives and the intended effects?

To ensure fair compensation for the small number of driving instructors whose registration is suspended but not subsequently revoked. This should be achieved by introducing a compensation scheme that: (a) Is transparent, simple to understand and incurs minimal administrative costs; (b) Imposes minimal administrative burdens; (c) Provides eligible claimants with fair compensation for income and non-income losses; (d) Is capable of responding to the needs and circumstances of individual eligible claimants. To enable the 2009 Act to come into force, with the effect of enhancing the safety of learner drivers through the immediate suspension powers

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Do nothing – This option has been rejected as, without the compensation scheme, the suspension power could not be used.

Option 1 - Implement a compensation scheme that calculates any income losses through assessing the actual losses incurred by the instructor

Option 2 – Implement a compensation scheme that calculates any income losses using fixed per diem amounts.

Option 1 is the preferred option. Although option 2 is marginally less costly to administer than option 1, it does not sufficiently achieve the objective of ensuring fair compensation, given the fixed nature of payments that do not take into account individual circumstances.

Will the policy be reviewed? It will be reviewed. If applicable, set review date: 01/2020

Does implementation go beyond minimum EU requirements?	N/A				
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro No	< 20 No	Small No	Medium No	Large No
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)	Traded: N/A		Non-traded: N/A		

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

Signed by the responsible Minister:

Mike Penning

Date: 01/01/2011

Summary: Analysis & Evidence

Policy Option 1

Description: Assessment of actual losses

FULL ECONOMIC ASSESSMENT

Price Base Year 2010	PV Base Year	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: £0.06

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	£0.0	£0.0	£0.3

Description and scale of key monetised costs by 'main affected groups'

One off - cost to DSA : £3,000. Per application - cost to instructor: £100; cost to DSA : £7,023.
Total cost of applications over ten years = £28,095 (four cases every ten years x £7,023 including rounding).
Annually £2,809 (£28,095/10). Over five years: One off £3000 + £28,095 = £31,095. Note: £6,240 reimbursement is included in "cost to DSA". It constitutes a transfer of funds and is also included as a benefit).

Other key non-monetised costs by 'main affected groups'

None arising from the compensation scheme. This is expected to address the impact of any potential non monetised costs arising from suspending an instructor in the small number of cases where his registration is not subsequently removed. The impact may also be mitigated by the fact that the instructor can take on alternative employment during the suspension – but this will be dependent on available short term employment.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	0.0	£0.0	£0.2

Description and scale of key monetised benefits by 'main affected groups'

Benefit to the instructor of reimbursement of losses is anticipated to be £6,240 and four are anticipated over ten years. This works out over ten years as £24,960. Annually £2,496.

(Note: the £6,240 reimbursement, as indicated above, constitutes a transfer of funds and is also included as a cost to DSA)

Other key non-monetised benefits by 'main affected groups'

The introduction of the compensation scheme will complete the statutory process, as anticipated in the 2009 Act, to enable the ADI Registrar to make use of the suspension power which has been introduced by Parliament. As a consequence, there are likely to be corresponding benefits to public safety. A system of assessing actual losses will have the benefit of taking into account specific circumstances and differences in working practices.

Key assumptions/sensitivities/risks

Estimate is based on two cases every five years. Scale of cost and benefit will depend on accuracy in determining which instructor poses actual threat. However, as suspension most likely to be used where instructor has already been convicted of a serious offence, risk significantly mitigated. Assume that, under this Option, applicant will incur costs of £100 per case - the cost of preparing the case (4 hours x £20 per hour) plus copying supporting papers.

Discount rate (%)

BUSINESS ASSESSMENT (Option 1)

Costs: £31,095	Benefits: £24,960	Net: £6,135	In scope of OIOO? No	Measure qualifies as NA
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Summary: Analysis & Evidence

Policy Option 2

Description: Assessment of fixed amounts

FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: £0.05

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	£0.0	£0.0	£0.3

Description and scale of key monetised costs by 'main affected groups'

One off - cost to DSA: £3,000

Per application - cost to instructor: £20; cost to DSA: £6,878.

Total cost of applications over ten years: = £27,513 (four cases every ten years x £6,878). Annually £2,751 (£27,513/10)

Over five years: One off £3000 + £27,513 = £30,513

Other key non-monetised costs by 'main affected groups'

None arising from the compensation scheme. This is expected to address the impact of any potential non monetised costs arising from suspending an instructor in the small number of cases where his registration is not subsequently removed. But reimbursing instructors' income losses on a fixed basis may have negative equity impacts as the amount reimbursed will not necessarily reflect the actual lost income. The impact may also be mitigated by the fact that the instructor can take on alternative employment during the suspension – but this will be dependent on available short term employment.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	0.0	£ 0.0	£0.2

Description and scale of key monetised benefits by 'main affected groups'

Benefit to the instructor: £6,240. This works out over ten years as £24,960. Annually £2496.

(Note as above, £6240 reimbursement constitutes a transfer of funds and is also included as a cost to DSA.

Other key non-monetised benefits by 'main affected groups'

The introduction of the compensation scheme will complete the statutory process, as anticipated in the 2009 Act, to enable the ADI Registrar to make use of the suspension power which has been introduced by Parliament. As a consequence there are likely to be corresponding benefits to public safety.

Key assumptions/sensitivities/risks

Discount rate (%)

Estimate is based on four cases every ten years. However, as suspension is most likely to be used where the instructor has already been convicted of a serious offence, the risk is significantly mitigated. We assume that, under this Option, the impact upon the admin baseline will be £20 per case - the cost of copying supporting papers.

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: £30,513	Benefits: £24,960	Net: £5,553	No	NA

Evidence Base (for summary sheets)

IMPACT ASSESSMENT FOR INTRODUCTION OF STATUTORY COMPENSATION SCHEME

Background

1. The Driving Instruction (Suspension and Exemption Powers) Act (“the 2009 Act”) became law in November 2009. It was introduced as a Private Members Bill in February 2009 by Willie Rennie (the then MP for Dunfermline and West Fife), following an attack on one of his constituents by an Approved Driving Instructor (ADI). The 2009 Act introduces powers to prevent ADIs from offering instruction where they present a danger to the public. However, before the 2009 Act can take effect, a statutory compensation scheme needs to be in place. The scheme aims to compensate those who have been suspended, but who are subsequently allowed to resume driving instruction.

2. The Registrar of ADIs (working within DSA) is responsible for the regulation of driving instruction in Great Britain. Only ADIs, or Potential Driving Instructors (PDIs) operating under a trainee licence, are permitted to give paid instruction in car driving. Registration lasts for four years, a trainee licence for six months, although the latter can be extended by the Registrar. ADIs must have their names entered onto a Register which is administered by the Registrar. In order to gain entry to the Register, instructors must pass a series of examinations and be “fit and proper” persons.

3. The Registrar can remove an ADI’s name from the Register, or revoke a PDI’s trainee licence, if he considers that the instructor is no longer satisfying the fit and proper person criterion. This would mean that the instructor can no longer lawfully give paid tuition in the driving of a motor car. An ADI or PDI can appeal to a Tribunal (the First-tier Tribunal) against withdrawal of their registration or revocation.

Reason for Intervention

4. The 2009 Act introduced the suspension power because there have been a number of cases of inappropriate behaviour towards pupils by driving instructors where the Registrar lacked the powers to intervene in a wholly effective manner. At present, the Registrar may remove such instructors from the Register, or revoke their trainee licence, but there is a minimum delay of some 45¹ days before his decision can take effect. Instructors may continue to give paid tuition during this period which presents the risks of further inappropriate behaviour occurring prior to removal/revocation and consequential damage to the reputation of the regulated driver training profession. Based on previous experience, we anticipate that five persons will be suspended per annum with only two every five years resulting in payment of compensation.

5. Suspension can only be used alongside action to remove an ADI’s name from the Register or to revoke a PDI’s licence. Suspension cannot be used as a freestanding measure. Whilst there is potential for the power to be used in cases where it is not followed by subsequent removal, we expect such instances to be rare. The requirement to introduce a compensation scheme is included in the Act to ensure that the suspension power is only used in cases where there is a clear need and, in the small number of cases where this is not followed by removal, the individuals affected are reimbursed.

6. As such, the 2009 Act already requires the Secretary of State for Transport to make regulations prescribing a compensation scheme, before the suspension power can be used and, without such a scheme, the benefits of the 2009 Act cannot be realised.

Intended effect

7. The 2009 Act allows the Registrar to suspend instructors’ registration in circumstances where, in his opinion, they present a significant threat to the safety of members of the public, where the Registrar has

¹ The statutory timetable allows the instructor up to 28 days to make representations against the Registrars notice of intended deregistration or revocation. It is a further 14 days before that notice can enter into effect; allowing for the postal service this can equate to around 45 days in total before an instructor can be prevented from delivering paid instruction. This is a minimum timescale – it can be longer if the instructor appeals against the decision.

advised that he is minded to remove their name from the Register or to revoke their licence. The effect is immediately to prevent the instructor from giving paid tuition.

8. We anticipate that the power might be used in the following situations:

- Where an instructor had been convicted of a sexual or violent offence; or admitted the same in court and is awaiting sentence;
- Where periodic checks reveal that an instructor is delivering a dangerously low standard of instruction.

9. The compensation scheme would aim to recompense instructors in situations where they have been suspended, but where the Registrar subsequently decided against removing the instructor's name from the register, a trainee licence is not revoked, or such a decision is overturned on appeal to the First Tier Tribunal.

10. Under provisions in the 2009 Act, an instructor is allowed to make a claim for both income losses and non-income losses. The former relates to losses incurred in respect of income during the period of suspension, usually by reference to the income usually earned by the instructor prior to the suspension. The latter is broader, involving the wider impact on the instructor and the driving school he operates. It is envisaged that it may entail elements such as interest paid on loans taken out to cover essential expenditure during the period of suspension.

Consultation

11. The DSA consulted between 8 March and 31 May 2010 on the details of the compensation scheme. DSA wrote to over 950 driver training associations, trade associations, individuals, special interest groups and those associated with the police and judiciary system. The Consultation Paper was posted on the DSA website, an e-mail alert was issued and a poster was placed in driving test centres.

12. 45 responses were received, including from driver training representative bodies and individual instructors. There was wide support for the proposals from those who responded. The proposal for income losses to be assessed based on actual losses incurred (the preferred option) received support from 32 of the 44 who expressed an opinion.

13. A number of comments were made which helped in the development of the proposals. In particular, the planned system has been modified to allow:

- Claims outside the proposed two year period in exceptional circumstances where agreed by the Registrar;
- Interim payments to be considered in the most exceptional cases where agreed by the Registrar.

14. In addition, DSA will ensure that requests for provision of documentation and approaches to third parties are undertaken sensitively.

Options

15. The consultation has considered the form that a compensation scheme will take, including the impact of the different elements on the costs and benefits of the scheme. This IA focuses primarily on the way in which assessment of income losses are calculated – whether actual or fixed amounts. Further details on the other elements of the scheme, which are all considered to be cost neutral from the point of view of applicants making a claim, can be found in Annex 2.

Do nothing option – The do nothing option has been rejected as it does not achieve the objective of enhancing the safety of learner drivers and other road users

Option 1 – Introduce a compensation scheme where the calculation of income losses is based on an assessment of the actual losses incurred by the instructor. This is the preferred option, as it is considered to be a fairer approach to compensation, taking into account the particular circumstances of each case.

Option 2 – Introduce a compensation scheme where the calculation of income losses is based on fixed per diem amounts. Although this is marginally less costly to administer than option 1, it is not as flexible to individual circumstances and therefore is not considered to be as fair an approach to compensation.

16. For both options, non-income losses will be calculated on the basis of a realistic assessment of the wider impact of suspension on the applicant. These can include elements such as interest on a loan taken out during the period of suspension to cover essential expenditure. As such, it is not appropriate to be specific about the amounts applied (other than to provide an example). Each specific case will need to be assessed on its merits. Reimbursement should reflect reasonable non-income losses, necessarily incurred.

Option 1 – actual losses incurred by the instructor

17. This system will involve making an assessment of the actual losses incurred by the instructor. When making a claim under such an arrangement, the instructor will need to provide DSA with evidence of gross loss of earnings. Depending upon the employment status of the instructor, evidence may be provided by an employer or, if the instructor is self-employed, take the form of business records showing the level of activity and income prior to suspension.

18. Under this Option, it is not possible to be prescriptive in terms of how income losses must be calculated as the circumstances of each case will differ. However, the claimant will need to clearly demonstrate the basis of the claim and produce supporting evidence. In this way it will be possible to obtain an accurate picture of the amount the instructor will have lost for each week that the suspension is in place. The level of compensation awarded will therefore reflect the number of weeks that the instructor was suspended and the level of income he had expected to receive. We would not expect to reimburse income losses outside the period of the suspension.

Costs

19. We anticipate the volume of suspension cases to be very low, probably in low single figures per annum. Of these, we would expect very few to result in the instructor's registration not being permanently removed and thereby giving entitlement to compensation. For the purpose of this assessment we have anticipated that five persons will be suspended per annum with only two every five years resulting in payment of compensation. This estimate is based upon the annual number of instructors whose registrations are permanently removed for reasons of serious sexual or violent misconduct. None of these decisions were overturned on appeal so the estimate of two cases of compensation every five years is high.

20. The following costs are for illustrative purposes only and it is accepted that there will be different scenarios. The underlying assumptions for these figures can be found in Annex 3. The assumed time period of suspension is 70 days, which is considered a realistic period for an instructor's registration to be suspended. It is above the minimum period of 45 days for the Registrar to remove an instructor from the ADI Register (see paragraph above). It is also below the period specified in the 2009 Act after which the suspension is terminated if the Registrar has not decided whether to remove the person's name from the Register – this is set at 75 days.

Monetised costs

One off costs

A	First-tier Tribunal set up costs	£3000.00
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Administrative cost to applicant

B	Applicant cost of making claim per hour	£20.00
C	Number of hours making claim	4
D	Cost of making claim (BXC)	£80.00
E	Applicant cost of photocopying papers	£20.00
F	Applicant cost for copying papers and making claim (D+E)	£100.00

Administrative costs of assessment to DSA

G	Daily rate – DSA senior manager	£292.32
H	Days spent on claim by DSA senior manager	0.25
I	Cost of DSA senior manager (GXH)	£73.08
J	Daily rate – DSA middle manager	£197.68
K	Days spent on claim by DSA middle manager	0.5
L	Cost of DSA middle manager (JXK)	£98.84
M	Daily rate – DSA junior manager	£130.93
N	Days spent on claim by DSA junior manager	2
O	Cost of DSA junior manager (MXN)	£261.86
P	DSA staff cost for assessment (I+L+O)	£433.78
Q	Daily cost of external expert	£500.00
R	No of days employ external expert for each case (expect to employ expert for two days in one in four cases – so 2 days/4 cases)	0.5
S	DSA cost of external expert for each case (QXR)	£250.00
T	Total cost (P+S)	£683.78

Reimbursement of instructor – income loss

U	Amount charged by instructor per hour before suspension	£20.00
V	Hours worked by instructor per week before suspension	28
W	Income per week (UXV)	£560.00
X	Number of weeks suspended	10
Y	Amount payable – income loss = (WxX)	£5,600.00

Non-income loss

Z	Non-income loss – taking facts of case into account, in this instance interest on a £8000 loan @ 8%	£640.00
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Total payable to applicant – income and non-income loss

A1	Income and non-income losses (Y+Z)	£6,240.00
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Total monetised cost

B1	Total cost per case - assessment and payment (F+T+A1)	£7,023.78
C1	Total cost over ten years - assessment and payment (four assumed every five years) (B1X4)	£28,095.12
D1	Annual cost (C1/10)	£2,809.51
E1	Total cost over ten years - assessment plus First-tier Tribunal (A+D1)	£31,095.12

Non-monetised costs

21. We have not identified non-monetised costs arising from the introduction of a compensation scheme – this will address adverse effects arising from the suspension where it is not followed by removal. The risk of incurring such a cost is reduced by the fact that, in the vast majority of cases, the suspension power will only be used on conviction and instances where an individual is suspended for poor instruction are likely to be very low.

22. It is also possible that the effect of the suspension on an individual instructor may be reduced if he is able to take on alternative employment during the suspension. However, an individual's ability to find short-term work will be entirely dependent on employment opportunities in the area in which he resides.

Benefits

Monetised benefits

23. As the compensation itself is merely a transfer between the DSA and the instructor, it is included as both a cost and as a benefit.

Total benefit to applicant – income and non-income loss

A1	Income and non-income losses (Y+Z)	£6,240.00
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Non-monetised benefits

24. A system of assessing actual losses will have the benefit of taking into account specific circumstances and differences in working practices. As indicated above, instructors charge significantly different rates and work a wide range of hours. These differences will be reflected in an assessment of income losses made under this system. This approach will also incorporate a bespoke evaluation of all non-income losses.

25. The introduction of the compensation scheme will enable the ADI Registrar to immediately prevent an ADI or Potential Driving Instructor (PDI) from continuing to give paid driving instruction where the instructor poses a significant risk to the safety of members of the public. There is, therefore, a major public safety benefit associated with the introduction of the compensation scheme.

Option 2 – fixed amounts

26. This Option will set a prescribed amount of compensation that will be paid for income losses for each day of the suspension. This amount will have been discussed with the industry and fixed in regulation. These fixed amounts will be based on an externally agreed system, similar to that paid to cover loss of earnings in other fields.

27. Whilst a standard percentage could theoretically be applied for non-income losses, it is unlikely that this would be accepted in practice. Most instructors would probably see their particular case as unique. Even if they were to accept a standard amount for income losses, they would not for non-income losses. This option therefore assumed that it would be necessary to put in place a system for evaluating non-income losses.

Costs

28. The following costs are again for illustrative purposes only and it is accepted that there will be different scenarios. The underlying assumptions for these figures can again be found in Annex 3. The assumed time period of suspension is again 70 days.

One off costs

A	First-tier Tribunal set up costs	£3000.00
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Administrative cost to applicant

B	Applicant cost for making claim per hour	£20.00
C	Number of hours making claim	1
D	Applicant cost for making claim (BXC)	£20.00

Administrative costs of assessment to DSA

E	Daily rate – DSA senior manager	£292.32
F	Days spent on claim by DSA senior manager	0.25
G	Cost of DSA senior manager (EXF)	£73.08
H	Daily rate – DSA middle manager	£197.68
I	Days spent on claim by DSA middle manager	0.5
J	Cost of DSA middle manager (HXI)	£98.84
K	Daily rate – DSA junior manager	£130.93
L	Days spent on claim by DSA junior manager	1.5
M	Cost of DSA junior manager (KXL)	£196.40
N	DSA staff cost for assessment	£368.32
O	Daily cost of external expert	£500.00
P	No of days employ external expert for each case (expect to employ expert for two days in one in four cases – so 2 days/4 cases)	0.5
Q	DSA cost of external expert	£250.00
R	Total cost N+Q	£618.32

Reimbursement of instructor – income loss

S	Income per day	£80.00
T	Number of days	70
U	Amount payable – income loss = SXT	£5,600.00

Non-income loss

V	Non-income loss – taking facts of case into account, in this instance interest on a £8,000 loan @ 8%	£640.00
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Total payable to applicant – income and non-income loss

W	Income and non-income losses (U+V)	£6,240.00
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Total monetised cost

X	Total cost per case - Total cost of assessment and payment (D+R+W)	£6,878.32
Y	Total cost over ten years - assessment and payment (based on four every ten years) (XX2)	£27,513.26
Z	Annual cost (Y/5)	£2,751.33
A1	Total cost over ten years – assessment plus First-tier Tribunal (A+Y)	£30,513.26

Non-monetised costs

29. We have not identified non-monetised costs arising from the introduction of a compensation scheme – this will address adverse effects arising from the suspension where it is not followed by removal. The risk of incurring such a cost is reduced by the fact that, in the vast majority of cases, the suspension

power will only be used on conviction and instances where an individual is suspended for poor instruction are likely to be very low.

30. It is also possible that the effect of the suspension on an individual instructor may be reduced if he is able to take on alternative employment during the suspension. However, an individual's ability to find short-term work will be entirely dependent on employment opportunities in the area in which he resides.

Benefits

Monetised benefits

Total benefit to applicant – income and non-income loss

W	Income and non-income losses (U+V)	£6,240.00
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Non-monetised Benefit

31. The introduction of the compensation scheme will enable the ADI Registrar to immediately prevent an ADI or Potential Driving Instructor (PDI) from continuing to give paid driving instruction where the instructor poses a significant risk to the safety of members of the public. There is, therefore, a major public safety benefit associated with the introduction of the compensation scheme.

Other costs for both options

32. For both options, there will be a potential cost of IT set up for appeals at the First-tier Tribunal. This will depend on whether it is necessary for the First-tier Tribunal to make changes to its IT systems to deal with appeals. An estimate of £3,000 is included from a previous case where the Tribunal introduced a small change to its IT system. There may also be a nominal administrative cost to government for updating the *per diem* rate set in regulations under Option 2 ever few years, in line with inflation.

33. There are benefits and disadvantages with the processes involved in both Option 1 and 2 – preferences may depend on the circumstances of the individual case. Some will consider it an advantage for individual instructors to know in advance what level of payment they could expect. This could mean there was less room for disagreement and potentially less scope for objections about the amount that was awarded. Alternatively, it is possible that there could be increased disagreement as applicants believed their reimbursement was too low compared with the amount they had actually lost. Instructors may be encouraged to know that their individual circumstances are going to be reflected in the amount of compensation that could be awarded.

34. On balance, Option 1 is considered stronger as it assesses individual losses, based on specific circumstances. This is considered fairer than reimbursing standard amounts applicable to all cases.

Impact upon Admin Burdens Baseline

35. We estimate that the compliance cost to individual ADIs and PDIs should be:

- Under Option 1, in the region of £100 per annum. It is anticipated that it would take each applicant around four hours to prepare the documentation required for each claim – and that there would be no more than one claim each year. With the same hourly rate of £20 as the instructor would charge for lessons, this equates to £80 in time to prepare an application for reimbursement. Copying of documentation is estimated at around £20.
- Under Option 2, in the region of £20 - the hourly rate. As this would require less work in preparing a case, and less supporting documentation, preparation should take no longer than an hour.
- In terms of administrative burdens generated from the introduction of the suspension powers themselves, we anticipate these being negligible.

Recommendation

36. Option 2 - the fixed amount system has advantages over Option 1, principally in respect of lower administrative costs. However, it is considered that these are outweighed by the advantages of Option 1 (actual losses). The main reason is that it is considered to be a fairer approach to compensation, taking into account the particular circumstances of each case instead of reimbursing standard amounts applicable to all cases. A “one size fits all” approach does not take account of differences in working practices, losses to the business or the unique qualities of an individual case. Such an approach would benefit those working short hours but disadvantage those working long hours. In contrast, by making an assessment of actual losses, the amount that was reimbursed would be based on the hours that an individual instructor typically worked before the suspension.

37. In the belief that the relative benefits of more equitable reimbursement outweigh the higher administrative costs, it has been decided to introduce Option 1 – an assessment of the actual losses incurred by the instructor. This Option was also favoured by respondents as documented in the response to consultation report.

Legislative arrangements

38. The suspension powers that we are proposing to commence, as contained in Schedule 1 to the 2009 Act, amend Part V of the Road Traffic Act 1988 (RTA 1988). New section 131A of the RTA 1988 requires a compensation scheme to be introduced by regulations in order for the new suspension provisions to have full effect. The Driving Instruction (Compensation Scheme) Regulations 2012 (the Regulations) will introduce such a scheme.

39. When commenced, paragraph 24 of Schedule 6 to the Road Safety Act 2006 (RSA 2006) (and the provisions in the RSA 2006 that introduce that paragraph), will amend the general regulation-making power in s141 RTA 1988. The relevance of this for present purposes is that this will permit the inclusion of incidental and supplementary provisions within regulations made under that section. We propose to commence the amendment to s141 RTA 1988 to enable the Regulations to specify certain limited circumstances in which the Secretary of State may revisit a compensation decision. Specifically, the Secretary of State will be able to revoke a decision as to a claimant's eligibility to compensation, revise the amount of a compensation award and recover overpayments, within six years of a compensation award being made, where the Secretary of State believes that information supplied in support of a compensation application was materially inaccurate, where an error has been identified in the processing of a claim, or where new information that is material to an application has become available.

40. Commencement of paragraph 24 of Schedule 6 to the RSA 2006, and the provisions that introduce it, introduce no regulatory burden. Commencing these provisions will simply give the Secretary of State a clear power to include in the Regulations the proposed provisions allowing the Secretary of State to revisit seemingly incorrect compensation decisions.

Annexes

Annex 1 should be used to set out the Post Implementation Review Plan as detailed below. Further annexes may be added where the Specific Impact Tests yield information relevant to an overall understanding of policy options.

Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

Basis of the review: [The basis of the review could be statutory (forming part of the legislation), it could be to review existing policy or there could be a political commitment to review];

We plan to review in 2020 or after three claims have been processed, whichever occurs first.

Review objective: [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern?; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?]

To consider the effectiveness of the compensation system in reimbursing relevant driving instructors fairly. The overall suspension power is in Primary Legislation and is not part of a review.

Review approach and rationale: [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach]

Analysis of individual claims and how these were assessed in accordance with the overall aim of providing fair compensation. Low numbers of expected claims makes this a realistic and appropriate course of action.

Baseline: [The current (baseline) position against which the change introduced by the legislation can be measured]

The current baseline is that there is no suspension power and no related compensation scheme. Review will be of the effectiveness of a new scheme.

Success criteria: [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives]

That compensation has been assessed fairly and effectively, taking into account all relevant information available to assessor.

Monitoring information arrangements: [Provide further details of the planned/existing arrangements in place that will allow a systematic collection of monitoring information for future policy review]

Low number of claims should make review straightforward.

Reasons for not planning a PIR: [If there is no plan to do a PIR please provide reasons here]

Annex 2 – Explanation of the compensation scheme

1. A number of principles will apply to all claims. These have been the subject of consultation and will be cost neutral from the point of view of applicants making a claim:

- Assessment of non-income losses – the assessment of these losses will also be based on actuals.
- Time limit for making claims - claims will need to be submitted to the Registrar within two years of either suspension ceasing to apply or notification by the First-tier Tribunal of a decision to uphold a relevant appeal, whichever is later. This should not add additional costs to claimants. Claims can only be considered outside this period in exceptional circumstances if agreed by the Registrar.
- Documentation – claims for compensation will need to be submitted in writing, including by e-mail where there are no conflicts with data protection requirements, in a standard format with relevant supporting documentation. Claimants will need to provide proof of financial loss or cost during the suspension period. Obtaining copies of documents may add a small cost to applicants, where photocopies are needed but this should be negligible – probably around £20 for each claim. In most cases, it is expected that instructors will have access to a computer and will be in a position to scan and print documents at home.
- Further information – the compensation scheme will also require the submission of reasonable further information or documentation to the Registrar to facilitate the calculation of any sum due. There will be some cost to the claimant but this is expected to be negligible.
- Approach to third parties – the Registrar may seek consent of claimants to reasonable enquiries being made of third parties. He will adopt a flexible approach when seeking information and will approach third parties in a sensitive way. Where consent is not given, it may prevent further processing of that element of the claim.
- Interim payments – these may be considered in the most exceptional cases of serious financial hardship. These would not be an additional payment but would be deducted from the final amount paid when the claim was completed.

2. To determine the amount of compensation due, the Registrar will take account of the available evidence provided by the claimant and resulting from enquiries. In some cases, an external expert in the assessment of compensation may be appointed by the Registrar to provide advice on the correct amount that should be paid to the claimant. The final decision on the level of the award would, however, remain with the Secretary of State for Transport.

Annex 3 - Assumptions

Option 1 – Actual Costs

1. The following assumptions are made when calculating the costs and benefits of Option 1.

- For income losses, an “average” amount of £20 charged by the instructor for a driving lesson. Discussions with the driver training industry before the consultation indicated that average charges range between £18 and £25. This was not opposed in the consultation by the respondents. A fee of £22 could therefore be seen as typical, but this is reduced to £20 for the purposes of illustration as it takes into account that there will have been no costs for petrol or wear and tear of the vehicle during the suspension as the instructor would not be delivering instruction.
- 28 hours worked per week. This is based on the working patterns of driving instruction professionals across the board and has been used as an average number of hours between those who work part-time in the industry and those who work full-time. A small number of respondents to the consultation suggested that this might be low, and ADIs worked between 6 and 8 hours a day. It was not confirmed whether this was a calendar or working week. Whilst noting this view, this IA retains the assumption of 28 hours a week, as it sets a balance between ADIs who work full time and those who work part time.
- For non-income losses, we have taken the example of an £8,000 loan taken out by the instructor to cover essential expenditure during the period of suspension and have assumed interest at 8% (based upon current loan interest rates) is payable. Again, this is for illustrative purposes only. The detail would almost certainly differ from case to case and may well comprise other elements.

2. There will also be a need for management of the process. We estimate that the staff cost for DSA is likely to be around £433 (based on a quarter day at a daily rate of £292 for a senior manager, a half day at a rate of £197 per day for a middle manager and two days at a rate of £130 per day for a junior manager). There may also be a need to seek the advice of an external expert to advise DSA in the evaluation of non-income losses. We estimate that this may cost an average of around £250 per claim (the daily rate is estimated at £500 – and we anticipate using an external expert for two days in one in four cases). All decisions on compensation will, however, be made by the Secretary of State (acting through DSA).

3. The DSA costs are average levels of remuneration for staff of the appropriate grades. The cost of an external expert is the estimated amount that DSA would pay to an accounting firm for provision of this service.

Option 2 – Fixed Amounts

4. The following assumptions were used when calculating the costs and benefits of Option 2.

5. We have used as a model the daily payments made by Her Majesty's Courts Service (HMCS) to jurors. These are, based on current HMCS rates:

- £ 64.95 per day for the first 10 days
- £ 129.91 per day from 11th day onwards

6. In the example used in the consultation, we took the view that it was appropriate to tailor the amounts payable under the compensation scheme to rates which are typical in the driving instruction industry. We based these on the same figures as in Option 1:

- An average amount of £20 per hour. Again, this took into account that there will have been no costs for petrol or wear and tear of the vehicle during the suspension;
- An average of a 28 hour working week which, if apportioned over seven days, equates to a four hour working day;

- For non-income losses, we took the example of an £8,000 loan taken out by the instructor to cover essential expenditure with interest at 8% payable. Whilst this is for illustrative purposes, it is recognised that a claimant will not be aware, in advance, of how long the suspension will last. It is therefore assumed that he may take out a loan which is higher in value to that which is eventually payable in income loss. £8,000 is considered a reasonable amount to be taken out.

7. This resulted in a standard rate of £80 per day, based on a four hour day multiplied by £20. We proposed to keep the method of calculating the fixed daily rate under review to ensure that the amount of compensation awarded reflected the rates charged within the driving instruction industry for tuition.

8 Again, there would be a need for management of the process. The staff cost for DSA is estimated at slightly lower than for actuals. It takes into account a marginally reduced amount of time needed for a junior manager to assess reimbursement. The estimate is around £368 (a quarter day for a senior manager, a half day for a middle manager and a day and a half for a junior manager – half a day less than for Option 1).

9. The use of an external expert is estimated at £250 per claim – based on two days in one in four cases. As with Option 1, all decisions on compensation, however, would be made by the Secretary of State (acting through DSA).

Annex 4 – Consideration of other impacts

Competition Assessment

1. We do not envisage that the decision will have any effect on competition. By recommending the acceptance of Option A – the assessment of actual amounts – we consider that we are treating every instructor individually and ensuring that those suspended will be reimbursed as appropriate for their income level prior to the suspension. As such, the payment of compensation, and the system chosen to assess the amount payable, will apply to all instructors equally.

Small Firms Impact Test

2. A small business is defined ² as one with:
- Fewer than 50 employees;
 - No more than 25% of the business owned by another enterprise (which is not a small business);
 - Less than £4.44 million annual turnover;
 - Less than £3.18 million annual balance sheet total.
3. Driving instructors are mainly micro businesses, with the majority traditionally running their own business and increasing numbers being franchised to larger schools. Our screening of the impact on small businesses has not identified an adverse effect on this group from introducing a compensation scheme. We expect volumes affected to be minimal. We have predicted that there will be, at the most, five cases of suspension a year out of a number of some 44,000 instructors. We expect to pay compensation on rare occasions – certainly no more than twice every five years.
4. More significantly, the compensation scheme will be of benefit, rather than detrimental, to those small businesses affected. Those instructors who have been prevented from operating but are subsequently permitted to resume will be recompensed accordingly. The use of actual amounts to assess income losses will ensure that reimbursement is proportionate to the impact on the business of the suspension.

Justice System

5. We have identified no impact on legal aid arising from the compensation scheme. Whilst there is scope for appeal to the First-tier Tribunal where an instructor disagrees with the amount awarded, we would not expect this to lead to a claim for legal aid. As is currently the case for ADIs whose names are removed from the register of Approved Driving Instructors by the Registrar, each individual can appeal to the First-tier Tribunal, and legal representation is not necessary to do this.

Other Economic Issues

6. The proposal entails payment of compensation and will not bring receipts to government. DSA, as a Trading Fund, will meet the cost of compensation from ADI fee income but, as the costs are expected to be negligible, this will not entail an increase in fees. There should be no effect on the public sector beyond the Department for Transport (and DSA in particular), the third sector or consumers other than driving instructors. There will be no new technologies arising from the proposal. It is unlikely that there would be a change in investment behaviour.

Greenhouse Gas Assessment

7. We have not identified any effect on carbon emissions arising from this proposal. Whilst an instructor, by the nature of his profession, uses fuel in day to day business, the payment of compensation should not affect the levels of such emissions.

² Better Policy Making: A Guide to Regulatory Impact Assessments. Cabinet Office January 2003

Wider Environmental Issues

8. We have not identified any other significant effect on the environment from this proposal. Photocopying of financial details in support of claims will use a very small amount of additional paper. We aim to exchange information electronically where this is possible.

Health And Well-Being Impact Assessment

9. Reimbursement of losses incurred as a result of the suspension should be a positive move and help to reassure instructors that redress will be made if they are ultimately allowed to resume delivering driving instruction.

Race Equality

10. The aim of the policy is to recompense those who had been suspended from delivering driving instruction and then subsequently allowed to resume said duties. This is not an issue which has race equality elements. Only where there was substantial evidence of the ADI or PDI no longer being “fit and proper”, or offering dangerously poor instruction, would the power be used. Such situations are linked to behaviour and standards, not ethnicity.

11. We have been unable to identify any disproportionate impact as a result of race, ethnicity, or nationality. All losses will be assessed equally, irrespective of any of these issues.

Gender Equality

12. We suspect that men rather than women will be compensated. This is because the majority of ADIs and PDIs within Great Britain are male rather than female, although the occupation is increasingly appealing to women because of the flexible nature of the work. Compensation will be paid, based upon an individuals' losses and not because of their gender.

Disability Equality

13. We have not identified any effect on disability equality arising from this proposal.

Human Rights

14. The First-tier Tribunal already has powers to review the Registrar's decision to withdraw an instructors permission to give paid instruction. The inclusion of a compensation scheme is specifically intended to protect the human rights of those who are prevented from delivering driving instruction.

Rural Proofing

15. It is possible, but unlikely, that suspension of the sole instructor operating in the locality could impact on the ability of learner drivers to obtain professional instruction. A compensation scheme should help to address this by offering assistance to an instructor where he was suspended – and faced going out of business – but the registration was not subsequently revoked.

Children And Young People

16. The suspension power is aimed at protecting learner drivers, many of whom are young or vulnerable people. Compensating those instructors who are ultimately allowed to resume delivering instruction will have no effect on young learner drivers, other than helping to ensure that there is availability of driving instruction (see “rural proofing” above) and possibly avoiding the need for instructors to increase fees for lessons to make up for income lost during the period of suspension.

Older People

17. Demographically, fewer older people take driving tests – and therefore lessons – than young people. For the older people who do take tests, the compensation scheme will have the same effect as for young

people – on potentially ensuring availability of instruction in remote areas and on keeping the fees down.

Income Groups

18. The impact of the suspension is likely to be on whether an individual relies on driving instruction for his main income. Such an instructor could be severely affected by a suspension, which underlines the need for a compensation scheme. Those instructors who have other occupations may be less severely hit.

19. Other than this, those on low incomes are likely to be most affected. Whilst the size of mortgages – and resultant re-payments - tend to be linked to the prosperity of a particular locality (see “Particular Regions” of Great Britain below) this does not apply to other costs such as food and utilities. An instructor in a low income group would feel the effects of the suspension quickly with devastating consequences for his livelihood. But the Registrar will only suspend instructors where there is evidence to support a concern that they pose a threat to the public, and we anticipate that cases will be few.

20. The compensation scheme will be of greatest benefit to those on low incomes and those for whom driving instruction is the main or sole income. In view of the differences in amounts charged between income groups, it is important that Option A is adopted, which reimburses actual amounts lost.

Devolved Countries

21. Driving instruction is not devolved to the Scottish Parliament nor the Welsh Assembly. We are, however, keeping the devolved administrations informed of our plans. Driving instruction is devolved to Northern Ireland and the suspension and compensation do not impact there.

Particular Regions Of Great Britain

22. In the same way as for different income groups – see above - the main impact of a suspension will be on whether driving instruction is the main or sole source of income. Following this, the severity will depend on level of income, which can be linked to locality. In poorer regions, instructors will be charging less and, whilst mortgages will be lower, other costs will be much the same as elsewhere.

23. In addition, poorer areas are likely to be ones with high unemployment. Availability of alternative employment is lower.

24. This underlines the need for the compensation scheme. It also supports the argument for Option A – actual income losses being reimbursed.

Privacy

25. The Privacy Impact Screening has identified that, whilst additional financial information will be sought, this will only be undertaken to the extent that it is necessary to evaluate a claim. The alternative approach, of using a fixed payment system, would not allow an individual assessment. It is therefore considered that the proposal is reasonable from a privacy perspective.

Sustainable Development

26. We have not identified any effect on sustainable development arising from this proposal.