
STATUTORY INSTRUMENTS

2012 No. 1548

ROAD TRAFFIC

The Driving Instruction (Compensation Scheme) Regulations 2012

<i>Made</i>	- - - -	<i>18th June 2012</i>
<i>Laid before Parliament</i>		<i>20th June 2012</i>
<i>Coming into force</i>	- -	<i>13th July 2012</i>

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 131A(1) and section 141(2) of the Road Traffic Act 1988.

Citation and commencement

1. These Regulations may be cited as the Driving Instruction (Compensation Scheme) Regulations 2012 and come into force on 13th July 2012.

Interpretation

2. In these Regulations—

“the Act” means the Road Traffic Act 1988;

“applicant” means a person claiming to be entitled to compensation in accordance with these Regulations, and “application” (where the context allows) is to be construed accordingly;

“determination as to amount” means a decision made by the Secretary of State under regulation 4(4) as to the amount of compensation that is payable to an entitled person;

“determination of entitlement” means a decision made by the Secretary of State under regulation 4(1) and (3) that an applicant is entitled to compensation under these Regulations;

“entitled person” means an applicant in respect of whom—

- (a) a determination of entitlement has been made; or
- (b) the Tribunal has ordered that there is an entitlement to compensation under these Regulations;

(1) 1988 c. 52; section 131A was inserted by the Driving Instruction (Suspension and Exemption Powers) Act 2009 (c.17), section 4(1) and Schedule 1, paragraph 7. Section 131A applies with modifications by virtue of sections 127(9) and 129(9) of the Road Traffic Act 1988, as inserted by the Driving Instruction (Suspension and Exemption Powers) Act 2009, section 4(1) and Schedule 1, paragraphs 3 and 6.

(2) Section 141(1) and (2) were amended by the Road Safety Act 2006 (c.49), section 42 and Schedule 6, paragraphs 1 and 24.

“relevant order” means—

- (a) an order made by the Tribunal under section 131A(7) of the Act requiring the Secretary of State to reconsider a decision under regulation 4(1) or a determination as to amount under regulation 4(4); or
- (b) the remission of a matter by the Tribunal under section 131A(8) of the Act;

“suspension” means the suspension by the Registrar of a person’s—

- (a) registration pursuant to section 128(7A) to (7G)(3) of the Act, in connection with the Registrar giving that person written notice under—
 - (i) section 127(5) of the Act that the Registrar is considering refusing that person’s application for the retention of that person’s name in the register; or
 - (ii) section 128(4) of the Act that the Registrar is considering removing that person’s name from the register, or
- (b) licence pursuant to section 130(7) to (13)(4) of the Act, in connection with the Registrar giving that person written notice under—
 - (i) section 129(7) of the Act that the Registrar is considering refusing that person’s application for a new licence in substitution for a licence current at the date of that application; or
 - (ii) section 130(3) of the Act that the Registrar is considering revoking that person’s licence,

and “suspended” is to be construed accordingly;

“suspension period” means the period of time beginning with the date on which the Registrar gives written notice to an applicant under section 128(7B) or 130(8) of the Act of the suspension of that applicant’s registration or licence, and ending on the date on which the suspension was terminated pursuant to section 128(7E) or (as the case may be) section 130(11) of the Act; and

“Tribunal” means the First-tier Tribunal.

Application for compensation

- 3. An application must be made in accordance with Schedule 1.

Determination of entitlement and determination as to amount

4.—(1) Where an application is made the Secretary of State must decide if a determination of entitlement and a determination as to amount are to be made.

- (2) The procedure set out in Part 1 of Schedule 2 applies—
 - (a) to the decision under paragraph (1) and the making of any determination of entitlement and determination as to amount; and
 - (b) unless a relevant order provides otherwise, where the Secretary of State is, pursuant to such an order, reconsidering a decision under paragraph (1) regarding—

(3) Section 128 was amended by the insertion of subsections (7A) to (7G) by the Driving Instruction (Suspension and Exemption Powers) Act 2009 (c.17), section 4(1) and Schedule 1, paragraph 1. These subsections apply with modifications by virtue of section 127(9) of the Road Traffic Act 1988 (c.52), as inserted by the Driving Instruction (Suspension and Exemption Powers) Act 2009, section 4(1) and Schedule 1, paragraph 3.

(4) Section 130 was amended by the insertion of subsections (7) to (13) by the Driving Instruction (Suspension and Exemption Powers) Act 2009 (c.17), section 4(1) and Schedule 1, paragraph 5. These subsections apply with modifications by virtue of section 129(9) of the Road Traffic Act 1988 (c.52), as inserted by the Driving Instruction (Suspension and Exemption Powers) Act 2009, section 4(1) and Schedule 1, paragraph 6.

- (i) an applicant's entitlement to compensation; or
- (ii) a determination as to amount.

(3) A decision that an applicant is entitled to compensation under these Regulations must be made where, on the basis of the information provided by the applicant, and any other relevant information, it appears that the applicant fulfils the following requirements—

- (a) the applicant's registration or licence was suspended by virtue of section 128(7A) to (7G) or (as the case may be) section 130(7) to (13) of the Act;
- (b) a circumstance set out in section 128(7E)(c), 128(7E)(e), 130(11)(c), 130(11)(e), 131A(2)(a) or 131A(2)(b) of the Act has been satisfied (including as those sections are applied by virtue of sections 127(9) and 129(9) of the Act); and
- (c) as a result of the suspension, the applicant incurred income losses or non-income losses (or both) of the kind specified in Schedule 3.

(4) Where a determination of entitlement has been made a determination as to amount must be calculated in accordance with regulation 6.

Revoking a determination of entitlement or revising a determination as to amount

5.—(1) The Secretary of State may notify an entitled person in writing that the Secretary of State is considering revising a determination as to amount or (as the case may be) revoking a determination of entitlement at any time within six years of the date on which it was made if—

- (a) any of the following apply—
 - (i) the Secretary of State, having further considered the matter, believes that any information supplied in support of an application was inaccurate in any material respect;
 - (ii) new information, which is relevant and material to an application, becomes available;
 - (iii) it appears to the Secretary of State that the amount specified in the determination as to amount was specified in error or (as the case may be) the determination of entitlement was made in error; and
- (b) the Secretary of State is satisfied that one of the conditions specified in paragraph (2) is satisfied.

(2) The conditions mentioned in paragraph (1)(b) are that—

- (a) in relation to a determination as to amount, the amount payable to the applicant is different from the amount specified in the determination as to amount;
- (b) in relation to a determination of entitlement, the person in respect of whom the determination of entitlement was made does not fulfil the requirements set out in regulation 4(3).

(3) Where the Secretary of State makes a notification under paragraph (1), Part 2 of Schedule 2 applies.

Calculation of compensation

6. The amount of compensation which is payable to an entitled person is the sum of the following amounts—

- (a) income losses sustained by the entitled person that are of the kind referred to in, and calculated in accordance with, Part 1 of Schedule 3; and

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- (b) non-income losses sustained by the entitled person that are of the kind referred to in Part 2 of Schedule 3.

Payment of compensation and recovery of any overpayment

7. Part 3 of Schedule 2 applies in relation to the payment of compensation and the recovery of any overpayment.

Signed by authority of the Secretary of State for Transport

18th June 2012

Mike Penning
Parliamentary Under Secretary of State
Department for Transport

SCHEDULE 1

Regulation 3

Application Requirements

Signed statement

1. In this Schedule, “signed statement” means a statement that is either—
 - (a) signed by the applicant; or
 - (b) signed on the applicant’s behalf by a person with authority to bind the applicant (“signatory”).

Time limit for submitting application

- 2.—(1) An application must be submitted within the period of two years beginning with the later of the following dates (as appropriate)—
 - (a) the date on which the suspension period ended; or
 - (b) the date on which the applicant was notified of the successful conclusion of an appeal by the applicant against a decision of the Registrar (whether or not the Registrar’s decision had taken effect) to—
 - (i) remove that person’s name from the register;
 - (ii) refuse that person’s application for the retention of that person’s name in the register;
 - (iii) revoke that person’s licence; or
 - (iv) refuse that person’s application for a new licence in substitution for a licence current at the date of that application for a new licence.
- (2) The Secretary of State may extend the time period mentioned in sub-paragraph (1) in any case where the Secretary of State is satisfied that by reason of the special circumstances of the case, it is just to do so.

Essential application information

- 3.—(1) An application must be made in writing and must contain the following information—
 - (a) the applicant’s name and home address;
 - (b) the address to which any correspondence should be sent, if different from the information provided under paragraph (a);
 - (c) the dates on which the suspension period started and ended; and
 - (d) the total amount claimed by the applicant in accordance with Schedule 3.
- (2) An application must also specify (as appropriate)—
 - (a) the amount of income losses claimed by the applicant in accordance with Part 1 of Schedule 3, and
 - (b) the amount of each of the non-income losses claimed by the applicant in accordance with Part 2 of Schedule 3, and documentation substantiating those amounts must accompany the application.
- (3) An application must be accompanied by a signed statement—
 - (a) that the information contained in the application is true to the best of the applicant’s knowledge and belief; and
 - (b) that the applicant undertakes to inform the Secretary of State of any new information coming to the knowledge of the applicant (including any change of circumstances) which

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may have relevance to, or materially affect, the application or any decision upon it (as the case may be)—

- (i) as soon as reasonably possible where that information comes to the applicant's knowledge before any determination of entitlement is made; and
- (ii) within one month of such knowledge where that information comes to the applicant's knowledge after the making of a determination of entitlement or an order of the Tribunal that the applicant is entitled to compensation (as the case may be) and before the expiry of a period of six years following the date on which the application is made.

SCHEDULE 2

Regulations 4(2), 5(3) and 7

Procedures for making, revoking and revising determinations and for payment and recovery of compensation

Part 1

Procedure for making of determinations

1. In this Part “signed statement” means a statement that is either—
 - (a) signed by the applicant; or
 - (b) signed on the applicant's behalf by a person with authority to bind the applicant (“signatory”).
2. Within the period of 28 days beginning with the date on which the Secretary of State receives an application, the Secretary of State must, if no additional information is required under paragraph 3, notify the applicant in writing—
 - (a) of a determination of entitlement and a determination as to amount, specifying in respect of the applicant—
 - (i) the amounts payable to that person for income losses and (as the case may be) for each of the non-income losses, as well as the total amount payable to that person, as calculated in accordance with regulation 6; and
 - (ii) where the total amount payable differs from the amount claimed in the application, the reasons for the difference; or
 - (b) that the application has been unsuccessful, specifying the reasons why the Secretary of State considers that the applicant does not fulfil the requirements set out in regulation 4(3).
3. If the Secretary of State requires additional information in order to substantiate the whole or any part of the applicant's claim, the Secretary of State must within a period of 28 days beginning with the date on which the Secretary of State receives an application, notify the applicant in writing of the additional information required and the reasons for requesting that additional information.
4. A notification under paragraph 3 may include a request for the applicant's consent for the Secretary of State to make reasonable enquiries of a person who holds information that is relevant to the applicant's claim, for the purpose of substantiating any part of the applicant's claim.
- 5.—(1) If notification is given under paragraph 3 the applicant must provide the Secretary of State with—

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- (a) such of the additional information requested in the notification as the applicant is reasonably able to provide and, where any of the requested additional information is not provided, such information as the applicant has available and a written explanation as to why the applicant is unable to provide the requested additional information; and
- (b) a signed statement that the additional information provided is true to the best of the applicant's knowledge and belief.

(2) The information and statement referred to in sub-paragraph (1) must be provided within a period of 28 days beginning with the date on which the notification was given unless special circumstances justify a longer period.

6. Within the period of 28 days of the date of receipt of the additional information and statement provided under paragraph 5 the Secretary of State must notify the applicant in writing—

- (a) of a determination of entitlement and a determination as to amount, specifying in respect of the applicant—
 - (i) the amounts payable to that person for income losses and (as the case may be) for each of the non-income losses, as well as the total amount payable to that person, as calculated in accordance with regulation 6; and
 - (ii) where the amount payable in accordance with the determination as to amount differs from the amount claimed in that person's application, the reasons for the difference; or
- (b) that the application has been unsuccessful, specifying the reasons why the Secretary of State considers that the applicant does not fulfil the requirements set out in regulation 4(3).

7. Paragraphs 2 and 6 do not prevent the Secretary of State, where the Secretary of State sees fit, from determining entitlement in respect of any part of an application, pending the Secretary of State's decision as to whether compensation is payable in respect of each of the income and non-income losses claimed by the applicant.

8. Where the procedure in this Schedule applies by virtue of regulation 4(2)(b) the reference in paragraph 2 to the Secretary of State receiving an application is to be treated as a reference to the date on which the Tribunal makes a relevant order in respect of an applicant and for the purpose of paragraph (2)(b)(ii) of that regulation—

- (a) there is to be omitted from Part 1 of this Schedule—
 - (i) paragraph 7;
 - (ii) sub-paragraph (b) of paragraphs 2 and 6;
 - (iii) the references in paragraphs 2 and 6 to “determination of entitlement”; and
- (b) if the Secretary of State has, before the date of the relevant order, made a determination of entitlement in respect of the applicant, the references in paragraphs 2 and 6 to “determination as to amount” are to be treated as including a reference to revising a determination as to amount.

Part 2

Revoking or revising determinations

9. An entitled person may, within a period of 28 days beginning with the date on which the Secretary of State sent a notification under regulation 5(1), make representations to the Secretary of State.

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10. The Secretary of State may extend the time period mentioned in paragraph 9 in any case where the Secretary of State is satisfied that by reason of the special circumstances of the case, it is just to do so.

11. The Secretary of State must take into account any representations received pursuant to paragraph 9, and must decide within 28 days of receiving those representations whether or not to revoke the determination of entitlement or (as the case may be) revise the determination as to amount.

12. Where the Secretary of State revises a determination as to amount under paragraph 11, the Secretary of State must notify the person in respect of whom the determination as to amount was made that the Secretary of State has made such a revision, specifying—

- (a) the amounts payable to that person for income losses and (as the case may be) for each of the non-income losses, as well as the total amount payable to that person, as calculated in accordance with regulation 6 (“the revised amount”);
- (b) the reasons for any difference between the revised amount and the corresponding amount in the determination as to amount that was the subject of the revision (“the original amount”); and
- (c) if there is a difference as referred to in sub-paragraph (b) and the Secretary of State has paid the original amount to that person—
 - (i) in the case of the revised amount exceeding the original amount, the amount by which the revised amount exceeds the original amount (“the underpayment amount”); and
 - (ii) in the case of the original amount exceeding the revised amount, the amount by which the original amount exceeds the revised amount (“the overpayment amount”).

13. Where the Secretary of State revokes a determination of entitlement in respect of a person under paragraph 11—

- (a) the Secretary of State must notify that person that the Secretary of State has revoked the determination, specifying the reasons why the Secretary of State considers that the applicant does not fulfil the requirements set out in regulation 4(3); and
- (b) the determination as to amount made in respect of that person is automatically revoked.

Part 3

Payment of compensation and recovery of overpayment

Payment of compensation

14.—(1) Subject to sub-paragraphs (2) to (6), the Secretary of State must pay an entitled person the amount of compensation which is notified to that person pursuant to paragraph 2(a)(i) or 6(a)(i) and must do so within a period of 45 days beginning with the day after notification was sent to that person.

(2) Sub-paragraph (1) does not apply if, within the period of 28 days of an applicant being notified under paragraph 2(a) or 6(a), an application is made to the Tribunal under section 131A of the Act for—

- (a) the determination of the amount of compensation payable to the applicant; or
- (b) an order that the Secretary of State reconsider a decision under regulation 4(1) regarding a determination as to amount.

(3) Unless a determination under sub-paragraph (2)(a) provides otherwise, the amount of compensation payable pursuant to a determination under that sub-paragraph must be paid by the

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Secretary of State to the applicant within a period of 45 days beginning with the date of that determination.

(4) Where an entitled person is notified of an amount of compensation payable pursuant to paragraph 2(a)(i) or 6(a)(i), as those paragraphs apply by virtue of paragraph 8, the Secretary of State must pay that person that amount of compensation and must do so within a period of 45 days beginning with the day after notification was sent to that person.

(5) Where, before any payment is made in accordance with sub-paragraph (1), notice is given under regulation 5(1) to the effect that the Secretary of State is considering revocation of the determination of entitlement—

- (a) if revocation takes place, sub-paragraph (1) does not then apply; or
- (b) if revocation does not take place, the Secretary of State must pay to the entitled person the amount notified to that person pursuant to paragraph 2(a)(i) or 6(a)(i) within a period of 45 days beginning with the day on which the Secretary of State decided not to revoke the determination of entitlement.

(6) Where, before any payment is made in accordance with sub-paragraph (1), notice is given under regulation 5(1) to the effect that the Secretary of State is considering revising a determination as to amount sub-paragraph (1) does not then apply and—

- (a) if revision takes place, the Secretary of State must pay to the entitled person the amount notified to that person pursuant to paragraph 12(a) and must do so within a period of 45 days beginning with the day after notification was sent to that person;
- (b) if revision does not take place, the Secretary of State must pay to the entitled person the amount notified to that person pursuant to paragraph 2(a)(i) or 6(a)(i) within a period of 45 days beginning with the date on which the Secretary of State decided not to revise the determination as to amount.

(7) Where, after payment is made in accordance with sub-paragraph (1), revision of a determination as to amount takes place under paragraph 11 and a notice under paragraph 12 specifies an underpayment amount, the Secretary of State must pay that amount to the entitled person and must do so within a period of 45 days beginning with the day after that notice was sent to that person.

Recovery of any overpayment

15. Where a notice sent to an entitled person under paragraph 12 specifies an overpayment amount and the Secretary of State has paid that person the original amount, the overpayment amount is immediately payable by that person to the Secretary of State.

16. Where the Secretary of State notifies a person pursuant to paragraph 13(a) that a determination of entitlement made in respect of that person has been revoked, any amount that has been paid under these Regulations to that person is immediately payable by that person to the Secretary of State.

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SCHEDULE 3

Regulation 4(3)(c) and 6

Income losses and non-income losses

Part 1

Income losses

1. The income losses for which compensation is payable in accordance with these Regulations are the amount of income that the entitled person would have been reasonably likely to receive for giving paid instruction in the driving of a motor car during the suspension period, as calculated in accordance with paragraph 2 or (as the case may be) paragraph 3.
2. Subject to paragraph 3, the amount referred to in paragraph 1 is to be calculated by reference to a period prior to the suspension period—
 - (a) in which the entitled person received income for giving paid instruction in the driving of a motor car; and
 - (b) that is reasonably comparable with the suspension period.
3. If it is not reasonably practicable for the amount referred to in paragraph 1 to be calculated in accordance with paragraph 2, then the amount referred to in paragraph 1 will be determined on the basis of such documents as are available to the entitled person and as are relevant to the application.

Part 2

Non-income losses

4. The non-income losses for which compensation is payable to an entitled person in accordance with these Regulations are—
 - (a) non-income losses reasonably sustained or incurred by the entitled person during the suspension period, including—
 - (i) any interest payable on a loan necessarily incurred by the applicant as a result of the suspension; and
 - (ii) where the applicant carries on a business in the provision of giving paid instruction in the driving of a motor car, the value of any damage to that business as a result of the suspension; and
 - (b) any reasonable costs and professional fees necessarily incurred in preparing an application.

EXPLANATORY NOTE

(This note is not part of the Regulations)

Under Part 5 of the Road Traffic Act 1988 (c. 52) (“the Act”), the Registrar may suspend an approved driving instructor (“ADI”) or a potential driving instructor (“PDI”) from giving paid car-driving instruction—

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- (a) in the case of ADIs, pending the removal of that person's name from the register, or the refusal of that person's application to retain their name in the register, or
- (b) in the case of PDIs, pending the revocation of that person's licence to give paid car-driving instruction, or the refusal of that person's application for a new licence in substitution for a licence current as at the date of that application,

where the Registrar believes that the person would pose a significant threat to the safety of members of the public if they were not suspended, and has given that person the required written notice.

These Regulations establish a scheme to compensate ADIs and PDIs for income losses and non-income losses that they incur as a result of the suspension, where they are subsequently allowed to resume giving paid car-driving instruction.

Regulation 3 and Schedule 1 set out the requirements for an application for compensation.

Regulation 4(1) and (2) and Part 1 of Schedule 2 provide for the Secretary of State to determine a claim for compensation, or re-determine a claim for compensation as a result of an order or remission of the matter by the First-tier Tribunal and set out the procedure to be followed in either case.

Regulation 4(3) and Schedule 3—

- (a) set out the conditions for entitlement to compensation under the Regulations; and
- (b) specify the descriptions of income losses and non-income losses for which compensation is payable.

Regulations 4(4) and 6 provide for the calculation of compensation.

Regulation 5 and Part 2 of Schedule 2 set out—

- (a) the circumstances in which the Secretary of State's decision that a person is entitled to compensation, or is entitled to a certain amount of compensation, may be revoked or revised accordingly by the Secretary of State; and
- (b) the procedure to be followed in order for the Secretary of State to decide whether or not to revoke or revise such decisions.

Regulation 7 and Part 3 of Schedule 2 provide for the payment of compensation and the recovery of any overpayment.

A full impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available at www.direct.gov.uk and is published with the Explanatory Memorandum alongside the instrument on www.legislation.gov.uk.