

# **DRIVING INSTRUCTION (SUSPENSION AND EXEMPTION POWERS) ACT 2009**

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## **EXPLANATORY NOTES**

### **BACKGROUND**

3. The provision of paid instruction in the driving of a motor car has been a regulated activity for around forty years. The relevant legislative provisions are set out in Part V of the Road Traffic Act 1988 (the RTA), and in regulations dealing with details such as the content of qualifying tests and the level of fees to be charged. The Road Safety Act 2006 (the RSA) introduced a number of changes to these arrangements including scope for the regulation of instruction in vehicles other than motor cars. These arrangements (set out in section 42 of, and Schedule 6 to, the RSA) have not been commenced and no date has yet been set for this.
4. Under the RTA, as it currently stands, only Approved Driving Instructors (ADIs) and licence-holders may give paid instruction in driving a car. ADIs are required to have their names entered on the Register which is administered by the Registrar, an official of the Driving Standards Agency (DSA). In order to gain entry to the Register, instructors must pass a series of examinations and be “fit and proper” persons. A licensing scheme under section 129 of the RTA enables partially-qualified instructors to gain experience in order to prepare for the final examination in the qualifying process (the test of instructional ability). When the RSA changes are commenced, it will be possible for regulations to be made prescribing circumstances where the requirement to be registered shall not apply in relation to driving instruction. In particular, it will be possible for regulations to exempt persons from the requirement to be registered for the purpose of gaining experience of giving instruction. Currently, any person giving paid instruction in the driving of a motor car whose name is not on the Register, or who is not licensed under section 129 of the RTA, is guilty of an offence.
5. Under the RTA, the Registrar has a power to remove a person’s name from the Register if the Registrar is satisfied that they have ceased to meet certain conditions including, among other things, ceasing to be a “fit and proper” person, failing to pass a periodic test of competence in instruction or being disqualified from driving. Before an ADI’s name can be removed from the Register, however, they must be given notice that the Registrar is considering this and of the relevant grounds. They then have 28 days to submit representations. If, having considered any representations, the Registrar is still minded to remove the ADI’s name from the Register, then the Registrar has to give notice of this decision. A minimum of a further 14 days must then elapse before the decision can take effect. There are then further rights of appeal to the Transport Tribunal.
6. In practice, allowing for time to consider representations, it therefore takes a minimum of around 45 days between the Registrar notifying the ADI that the Registrar is minded to remove that ADI’s name from the Register, and that removal taking effect. In the vast majority of cases this procedure causes no difficulty. However, there is a concern that in serious cases there is a need for more immediate action, on an interim basis, to prevent an ADI continuing to give instruction during this period. There have been cases of inappropriate behaviour towards pupils by ADIs where the Registrar was unable

*These notes refer to the Driving Instruction (Suspension And Exemption Powers) Act 2009 (c.17) which received Royal Assent on 12th November 2009*

to intervene quickly and effectively. In one case, an ADI who had been convicted of a sexual offence involving a pupil was able to continue giving instruction while the deregistration process continued.

7. The Act addresses this concern by enabling the Registrar to suspend an ADI's registration at the same time as informing the ADI that the Registrar is minded to remove that ADI's name from the Register. The Act also allows the Registrar to suspend registration where the Registrar intends to refuse an ADI's application to extend their registration. In either case, the effect of a suspension is immediately to prevent the ADI from giving paid instruction. However, the Registrar may suspend an ADI's registration only if the Registrar also believes that the ADI would pose a significant threat to the safety of members of the public if the ADI's registration were not suspended.
8. The power to suspend is therefore available only in the most serious cases; for example, where an ADI has been convicted of a serious criminal offence, such as a sexual or violent offence, or where the ADI has repeatedly failed to pass periodic tests of their instructional ability, or their ability and fitness to drive, or they have achieved a very low mark in such tests.
9. The Act also places an obligation on the Secretary of State to introduce a compensation scheme by regulation. This will, in particular, apply where suspension does not ultimately lead to removal of the ADI's name from the Register, or where such removal is overturned as a result of an appeal. In those circumstances, the ADI will be entitled to claim for lost income and other losses resulting from, and occurring in, the period of suspension.