



Memorandum to the Transport Select Committee

**Post Legislative Assessment
of the Driving Instruction
(Suspension and Exemption
Powers) Act 2009**

Presented to Parliament
by the Secretary of State for Transport
by Command of Her Majesty
October 2014



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MEMORANDUM TO THE TRANSPORT SELECT COMMITTEE

Post Legislative Assessment of the Driving Instruction (Suspension and Exemption Powers) Act 2009

Introduction

1. This memorandum provides an assessment of the Driving Instruction (Suspension and Exemption Powers) Act 2009 and has been prepared by the Department for Transport for submission to the Transport Select Committee. It will be published as part of the process set out in the document Post Legislative Scrutiny – the Government’s Approach (CM 7320) (as published by the previous administration).

Background

2. The relevant legislative provisions for giving paid instruction in the driving of a motor car are set out in Part V of the Road Traffic Act 1988 (RTA), and in regulations¹ dealing with the details such as the nature of the qualifying tests and tests of continued ability and fitness to give instruction and the level of fees to be charged.
3. Under the RTA, only Approved Driving Instructors (ADIs) may give paid instruction in the driving of a motor car. ADIs are required to have their names entered on to a Register, which is administered by the Registrar, an official of the Driver and Vehicle Standards Agency.
4. In order to gain entry to the Register, instructors must pass a series of examinations and satisfy the Registrar they are a ‘fit and proper’ person. Registration lasts for four years.
5. The RTA also makes provision for a Potential Driving Instructors (PDIs) operating under a trainee licence to give paid instruction in car driving, while they are preparing for and taking the examinations. The trainee licence lasts for 6 months, and may be extended at the discretion of the Registrar.
6. Under the RTA, the Registrar has a power to remove an ADI’s name from the Register or revoke a PDI’s trainee licence if he is satisfied the instructor has

¹ The Motor Cars (Driving Instruction) Regulations 2005 (as amended) SI 2005 No.1902

failed to meet certain conditions, including, amongst other things, ceasing to be a 'fit and proper' person.

7. The removal process can take a minimum of 45 days to complete, taking account of time allowed for representations and notice required to be given of a decision to revoke. The ADI is able to continue working during that period.
8. An ADI or PDI has the option to appeal to the First-tier Tribunal against withdrawal of their registration or revocation of their trainee licence.

Objectives of the Driving Instruction (Suspension and Exemption Powers) Act 2009

9. The Driving Instruction (Suspension and Exemption Powers) Act 2009 received Royal Assent on 12 November 2009. The Act was introduced as a Private Members Bill in February 2009 by Willie Rennie (the then MP for Dunfermline and West Fife) following a sexual attack on one of his constituents by an ADI. The Act introduced powers to suspend instructors' registration with immediate effect to prevent them offering instruction where they present a significant danger to the safety of the public.
10. The Act also included the requirement to introduce a compensation scheme in the rare cases where suspension is not followed by removal from the Register, to ensure that individuals affected are reimbursed. The Driving Instruction (Compensation Scheme) Regulations 2012 came into force on 13 July 2012.

Rationale for Government intervention

11. If the Registrar was satisfied that an ADI had ceased to be a 'fit and proper' person to provide instruction or is providing a substandard level of instruction, the provisions of the RTA enables the removal of the instructor's name from the Register. The process required to facilitate removal can in practice take up to 45 days. This is to ensure that natural justice prevails and the instructor receives notice of the Registrar's intention and allows them 28 days to submit representations. If, after consideration of those representations, the Registrar remains minded to remove the ADI's name from the Register, then the Registrar must 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 First-tier Tribunal.
12. In the vast majority of cases this process poses no difficulty, if a serious offence has been committed it is likely the instructor will be immediately taken

into custody and they will perforce be prevented from continuing to provide instruction.

13. However, where an ADI has been convicted of a serious offence and is awaiting sentencing or has received a non-custodial sentence, or where the ADI's level of instruction is deemed to place their pupil and/or other road users in danger, the ADI could continue to instruct while the removal process was underway. Although a rare circumstance, this might present the opportunity for further inappropriate behaviour or dangerous instruction occurring and as a result, a significant risk of reputational damage to the regulated driver training profession. In the case highlighted by Mr Rennie, the day after the ADI received his conviction from the court; he was seen conducting paid driving instruction.
14. To address this, the suspension power is intended to be used when the Registrar is minded to remove a person's name from the Register or revoke a trainee licence and the person presents a significant threat to the safety of the public. For instance:
 - Where an instructor has been convicted of a sexual or violent offence; or admitted the same in court and is awaiting sentence
 - Where an instructor has shown during a test of continued ability to provide instruction that he is delivering a dangerously low standard of instruction
15. The power to suspend is therefore only available in the most serious of cases, where the Registrar has formed the intention of removing the instructor's name from the Register or revoking the PDI's trainee licence. It cannot be resorted to as a punitive stand-alone measure.
16. In situations where an instructor has been suspended, but the Registrar subsequently decides against removing the instructor's name from the Register or the decision is overturned on appeal to the First (or Second) Tier Tribunal the provisions of the compensation scheme enables the ADI or PDI to claim for lost income and other losses resulting from, and occurring in, the period of suspension.

Implementation

17. The Act received Royal Assent on 12 November 2009. As it placed an obligation on the Secretary of State to introduce a compensation scheme by regulation, full implementation was not, however, possible until 13 July 2012 when the Driving Instruction (Compensation Scheme) Regulations 2012 came into force.

18. The Road Safety Act 2006, once implemented, will introduce new arrangements for the registration of persons who wish to provide paid instruction and those operating as trainee instructors. The Act takes account of those replacement powers.
19. At the time the Driving Standards Agency (as was) consulted on the provisions of the compensation scheme it was made clear that the use of the powers within the Act would be on an exceptional and extremely uncommon basis.

Conclusion

20. The arrangements to register as an ADI ensure that instructors meet the high standards of conduct and instructional ability that are required to prepare learner drivers to qualify to drive safely on GB roads. The introduction of the Act (and associated compensation scheme) provides additional reassurance to a learner driver that their instructor continues to meet those high standards and is a 'fit and proper' person. They can take assurance that if, exceptionally, their instructor falls below those justifiably high standards, and is deemed to pose a serious danger to the public, action will be taken immediately to prevent them providing further instruction.
21. It was not the Department's intention to measure the successful implementation of the Act by the number of occasions the powers have been used. It was clearly stated² that the expectation was they would be used on a very infrequent basis, and that has proved correct. The Registrar has considered suspension of an ADI on a limited number of occasions once the process to remove an instructor from the Register had begun, however, careful reflection has led to the conclusion that it would not be an appropriate or proportionate action to take in those particular cases. In one other case where suspension action had been intended to be taken, the ADI resigned from the register and therefore the Registrar was not required to act.

Department for Transport

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² http://www.legislation.gov.uk/ukia/2011/491/pdfs/ukia_20110491_en.pdf

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