EXPLANATORY MEMORANDUM TO

THE DRIVING INSTRUCTION (COMPENSATION SCHEME) REGULATIONS 2012

2012 No. 1548

1. This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 These Regulations establish a scheme that requires the Secretary of State to pay compensation for income losses and non-income losses incurred by approved driving instructors ("ADIs") and potential driving instructors ("PDIs") who have been suspended from giving paid car-driving instruction in prescribed circumstances, but who are subsequently permitted to resume giving driving instruction.

2.2 The Regulations:

(a) set out the conditions for entitlement to compensation;
(b) specify the descriptions of income losses and non-income losses for which compensation is payable;
(c) set out the requirements for an application for compensation;
(d) specify how compensation is to be calculated and the procedure for paying compensation;
(e) set out the procedure to be followed in order for the Secretary of State to determine a claim for compensation, or to re-determine a claim for compensation as a result of an order or remission of the matter by the First-tier Tribunal; and
(f) provide for the recovery of overpayments.

3. Matters of special interest to the Joint Committee on Statutory Instruments

None

4. Legislative Context

4.1 Under Part V of the Road Traffic Act 1988 (c. 52) ("1988 Act"), ADIs must be registered to give paid car-driving instruction, and PDIs must hold a licence to do so ("trainee licence"). The Registrar of Approved Driving Instructors ("Registrar")[1] has power in certain circumstances to:

(a) remove an ADI's name from the register of approved instructors ("Register");
(b) refuse an ADI's application to retain their name in the Register;
(c) revoke a PDI's trainee licence; and

[1] The Registrar is the officer of the Secretary of State who compiles and maintains the register of approved instructors under section 125 of the Road Traffic Act 1988, c.52.

(d) refuse a PDI's application for a new trainee licence in substitution for a current trainee licence.

4.2 The Driving Instruction (Suspension and Exemption Powers) Act 2009 ("2009 Act"), which received Royal Assent on 12 November 2009, inserted new suspension provisions into Part V of the 1988 Act, including what the 2009 Act calls "transitory amendments" to Part V of the 1988 Act. These "transitory amendments", which are set out in Schedule 1 to the 2009 Act, have been commenced by The Driving Instruction (Suspension and Exemption Powers) Act 2009 (Commencement No. 1) Order 2012 ("Commencement Order").

4.3 The "transitory amendments" are considered to be such because when section 42 of, and relevant provisions in Schedule 6 to, the Road Safety Act 2006 ("2006 Act"), are brought into force, those provisions will make significant amendments to the current driver registration and licensing regime in Part V of the 1988 Act. No date has been set for commencing those 2006 Act provisions, but when those provisions are commenced, the remaining provisions in the 2009 Act (which repeal the "transitory amendments") will need to be brought into force.

4.4 The "transitory amendments":

(a) give the Registrar powers (under new sections 128(7A) to (7G) and 130(7) to (13) of the 1988 Act) to suspend an ADI's registration or a PDI's trainee licence where the Registrar:

(i) is considering making one of the decisions listed in paragraph 4(1) above[2], or has made one of those decisions but it is not yet in effect;

(ii) has given the ADI or PDI written notice of that decision; and

(iii) believes that the person would pose a significant threat to the safety of the members of the public if the registration or trainee licence were not suspended; and

(b) require the Secretary of State to make regulations (under new section 131A of the 1988 Act) to compensate ADIs and PDIs who are suspended under the new suspension provisions, but who are subsequently permitted to resume giving driving instruction.

5. Territorial Extent and Application

The instrument applies to Great Britain.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

[2] The suspension powers can be used in connection with an ADI's application to retain their name in the Register or a PDI's application for a new licence, by virtue of sections 127(9) and 129(9) (respectively) of the 1988 Act. For simplicity, this memorandum only refers to the removal of a name from the Register or the revocation of a licence, but those references should be taken to include (respectively) the refusal of an application to retain a name in the Register and the refusal of an application for a new licence.

7. Policy background

What is being done and why

7.1 The 2009 Act gives the Registrar power to prevent a driving instructor from giving driving instruction where that person poses a significant threat to the safety of the members of the public, and where consideration is being given, or steps have been taken, to remove that person's name from the Register, or to revoke their trainee licence. Under the 2009 Act, the Registrar's decision to suspend takes effect as soon as the Registrar notifies that decision to the driving instructor.

7.2 As mentioned, new section 131A requires that regulations be made to establish a compensation scheme for driving instructors who are suspended but subsequently reinstated.

7.3 The Regulations set out the criteria and procedures for the Secretary of State to decide whether or not a driving instructor appears to be entitled to compensation for income losses and non-income losses incurred, as a result of the suspension, and if so, the amount of compensation that is payable to that person. The Regulations also set out the circumstances in which a compensation award may be revised or revoked, and provide for the recovery of overpaid compensation amounts.

8. Consultation outcome

8.1 The key provisions in the consultation scheme were consulted on between 8 March and 31 May 2010.

8.2 The Driving Standards Agency ("DSA", an executive agency of the Department for Transport) 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 website of the DSA, an e-mail alert was issued and a poster was placed in driving test centres. The Scottish Executive and Welsh Assembly Government were informed when the consultation was launched, as was the Tribunal Procedure Committee (because section 131A of the 2009 Act gives the First-tier Tribunal the role of hearing appeals from the Secretary of State's compensation decisions, both as to entitlement and amount).

8.3 45 responses were received to the consultation, including from key representative bodies of the driver training profession. The proposed consultation scheme was widely supported by those who responded.

8.4 A number of the responses assisted in the development of the Regulations. For example, the Regulations allow the Secretary of State to accept applications for compensation that are lodged outside the two-year time limit where the Secretary of State is satisfied that the special circumstances of the case make it just to do so. The Regulations also reflect the method of assessing income

8.5 The Scottish Executive and Welsh Assembly Government were consulted on the Regulations in draft in late 2011 and early 2012. Neither devolved administration had any comments on the draft Regulations.

8.6 The Tribunal Procedure Committee was consulted on the Regulations in draft in January and February 2012, to ensure that the procedures set out in the Regulations were compatible with the relevant rules of the First-tier Tribunal. The Tribunal Procedure Committee identified no issues requiring further consideration.

8.7 Copies of the consultation paper and the consultation response are on the Department for Transport website at www.dft.gov.uk.

9. Guidance

Guidance has been issued on the operation of the scheme, and is available on the DirectGov website.

10. Impact

10.1 The impact of the Regulations on charities and voluntary bodies is nil.

10.2 The impact of the Regulations on business is not adverse. Instructors who are suspended but who are subsequently permitted to resume giving driving instruction, will be recompensed under the compensation scheme.

10.3 The cost to the public sector of successful compensation claims is estimated at some £17,000 over five years, including one-off costs to the First Tier Tribunal of £3,000. This is based on a predicted average of two cases over a five year period, which is considered to be a high estimate. Each case is estimated to cost approximately £7,000 as follows:

(a) £6,240 paid to the entitled driving instructor;

(b) £780 cost to the DSA for evaluation of the claim.

10.4 The Impact Assessment mentions a potential one-off cost to the DSA if it is necessary for the First-tier Tribunal to make changes to its information technology (IT) systems to deal with appeals. This cost, if it arises, will result from the commencement of the "transitory amendments" in the 2009 Act rather than from the Regulations.

10.5 The Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk.

11. Regulating small business

The Regulations apply to small business but will have no adverse impact on it.

12. Monitoring & review

The Regulations will be subject to an internal review in 2020 or after three claims have been processed, whichever occurs first, and the legislation may be amended accordingly.

13. Contact

Robin Massey at the Driving Standards Agency Tel: 0115 936 6098, e-mail: robin.massey@dsa.gsi.gov.uk .