EXPLANATORY MEMORANDUM TO

THE REHABILITATION COURSES (RELEVANT DRINK OFFENCES) REGULATIONS 2012

2012 No. 2939

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

These Regulations make provision for the Secretary of State, acting by way of the Driving Standards Agency, to approve and monitor drink-drive rehabilitation courses. Upon a conviction for a relevant drink offence where a driving disqualification is imposed, a court may order that the defendant's period of disqualification is reduced if an approved course is attended and completed.

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

None

4. Legislative Context

4.1 The Secretary of State has the function of approving drink drive rehabilitation scheme (DDRS) courses under sections 34A to 34C of the Road Traffic Offenders Act 1988 (RTOA) as substituted by the Road Safety Act 2006 (RSA), section 35.

4.2 Section 35 RSA provides for the replacement of the existing scheme for rehabilitating drink drivers with more flexible arrangements. These Regulations introduce a better and more effective scheme which includes a right of appeal for applicants where approval to deliver DDRS courses has been refused or approved subject to condition and for course providers where approval is withdrawn. The powers also provide for the changing of the funding stream for administration of the scheme, from general taxpayer to end user in accordance with Her Majesty's Treasury rules on "user pays".

4.3 As a consequence of introducing these Regulations the Road Traffic (Courses for Drink-Drive Offenders) Regulations 1992(**1**) are revoked.

5. Territorial Extent and Application

Save in respect of the revocation of the Road Traffic (Courses for Drink-Drive Offenders) Regulations 1992, this instrument applies to England and Scotland only. Wales and Northern Ireland will be making their own arrangements.

(**1**) S.I. 1992/3013.

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.

7. Policy background

What is being done and why

7.1 Since 1 January 2000, the courts throughout Great Britain (GB) have been able to offer to drivers, who have been disqualified for a period of at least 12 months for a specified drink-driving offence, a referral to a course approved under a scheme for the rehabilitation of drink drivers. The DDRS replaces that scheme and extends the range of drink-related offences to which it applies. The relevant drink offences are:

- Causing death by careless driving when under the influence of drink or drugs;
- Driving, or being in charge of a vehicle when under the influence of drink or drugs;
- Driving or being in charge of a motor vehicle with alcohol concentration above prescribed limit; and
- Failing to provide specimens for analysis.

7.2 If an offender opts to take up the referral opportunity and satisfactorily completes a course, their period of disqualification will be reduced - this may be by as much as one quarter of the disqualification period.

7.3 A review of the current scheme, carried out by Transport Research Laboratory in 2004 (TRL 613) found that satisfactory completion of a DDRS course also reduces the likelihood of re-offending.

7.4 Currently, 21 organisations are approved to deliver rehabilitation courses – charging offenders between £150 and £250 per course attendance. These include specialist training companies, probation services and local authorities; they provide rehabilitation course coverage for GB. Current course approvals are granted with an open-ended term with their administration being funded by the general taxpayer. A perceived limitation is that national coverage in terms of running courses is 'carved up' among this network of providers, which does not guarantee that each court area is served by a provider: the re-launch of the scheme provides an opportunity to address this by issuing fixed-term approvals for specified geographical areas and opening up the revised scheme to new providers, allowing for multiple providers in the specified geographical areas.

7.5 TRL613 also confirmed that there were opportunities for improvement and modernisation of the scheme then in operation. The review concluded –

"Overall, this study found a marked benefit to all offenders, regardless of social status, age or gender, of attending a DDR course."

The review also stated:

"The results of the survey have clearly demonstrated wide variation in the measures adopted within the operation of individual organisations.

The survey of course provider practices identified aspects of course operation that either went against the DfT-produced guidelines, or were not addressed by the current guidelines."

7.6 This review further found that there was a need for a number of the organisations to introduce or to improve quality assurance measures to monitor the effectiveness of their courses. The 2004 review has been revisited since the RSA was passed in 2006. The Department commissioned an independent audit over two years (2007-2009). This audit identified that, notwithstanding administrative action which the Department had been able to take in the meantime, the overall performance of providers was not improved; and that all the issues identified in 2004 persisted.

7.7 In 2009, following the conclusion of the Department's review, the Secretary of State made a decision to use the powers within the RSA, to modernise the scheme including improving quality assurance and approval arrangements. At the same time it was also decided to change the way that the public sector costs of administering the scheme are met, in line with the views of Parliament. This involves transferring those costs from the general taxpayer to those persons who derive benefit from the service – i.e. the offender undertaking an approved DDRS course, consistent with the "user pays" principle.

7.8 In May 2011, the current Government announced in its Strategic Framework for Road Safety that it would improve the enforcement of drink and drug driving legislation by mandating the drink drive rehabilitation courses for disqualified drink drivers; this took into account Sir Peter North's Report on Drink and Drug Driving and the subsequent report by the Transport Select Committee. Modernising the rehabilitation scheme for drink drivers is the first step towards achieving that aim.

8. Consultation outcome

8.1 The key provisions in the Consultation Paper: *New Approval Arrangements for Drink-Drive Rehabilitation Courses* were consulted on between 9 November 2011 and 4 January 2012.

8.2. The Driving Standards Agency ("DSA"), an executive agency of the Department, wrote to all existing course providers, over 50 driver training associations, trade associations, individuals, special interest groups and those associated with the police and judicial system. The Consultation Paper was posted on the Department's website, and an e-mail alert/letter was issued to all those who have requested copies of DSA consultations (over 20,000 people). The closing date for responding was 4 January 2012.

8.3 34 responses were received by DSA to the Consultation Paper, including from the Royal Society for the Prevention of Accidents (RoSPA), the Institute of Advanced Motorists (IAM), the Association of Drink Drive Approved Providers of Training (ADDAPT) and the Justices' Clerks Society.

8.4 A number of the responses assisted in the development of the Regulations. For example, the Regulations reflect the regularity of payments by providers to DSA in respect of payments following the grant of approval.

8.5 The proposals in the Consultation Paper relate to provisions in the RSA and introduce the new sections 34A to 34C of the RTOA, allowing DSA to approve courses and improve the overall administration of the DDRS.

8.6 There was generally good support for the majority of the proposals, although some reservations were expressed by those currently delivering courses. The majority of replies were made by existing course providers. There were also a number of responses from those interested in becoming DDRS course providers.

8.7 The Tribunal Procedure Committee was consulted on the Regulations in draft to ensure that the procedures set out in the Regulations were compatible with the relevant rules of the First-tier Tribunal.

8.8 Copies of the Consultation Paper and the consultation response are on the DSA website at www.gov.uk/dsa.

9. Guidance

Guidance has been issued on the operation of the DDRS, and is available at www.gov.uk/dsa.

10. Impact

10.1 An Impact Assessment is attached to this memorandum.

10.2 There is no net cost to business. The main impact will be upon those course providers who opt to provide rehabilitation courses under the new scheme. Providers will recover delivery costs via charges levied to the offender, but in addition to the new cost recovery model being introduced, there will also be cost-savings to the provider. The new scheme will not cost any more to administer than it does at present. Under the new scheme, the costs of administration are transferred from the tax-payer to the offender via the provider.

10.3 The impact on the public sector is positive as the cost of administering the DDRS is transferred from general taxation to end user. Course providers recover the cost of their fees from the offenders who attend the courses – on average 48,500 offenders complete DDRS courses per annum at a cost of between £150 and £250 per course. Responsibility for managing the previous scheme was transferred to DSA in July 2009. As a Trading Fund, DSA is required to recover the costs of services that it delivers and, in line with government policy, these costs must be recovered from beneficiaries – the “user pays” principle. In administering DDRS, DSA have, therefore, introduced a fee structure that enables recovery of costs from course providers in a volume-related manner, linked to the throughput of courses they provide. On that basis, the new fees charged for administering the scheme are considered a transfer of funding and are therefore out of scope of the 'one in, one-out’ ruling.

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 seven years after their introduction, which is when the first round of approvals is due to end. The legislation may then be amended accordingly.

13. Contact

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