



# **The Driving Instructors (Registration) Bill Delegated Powers Memorandum**

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

January 2016



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Print ISBN 9781474127752

Web ISBN 9781474127769

ID 2786927 01/16

Printed on paper containing 75% recycled fibre content minimum

Printed in the UK by the Williams Lea Group on behalf of the Controller of Her Majesty's Stationery Office

# **Delegated Powers Memorandum – The Driving Instructors (Registration) Bill**

## **Memorandum by the Department for Transport**

### **Introduction**

1. This memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee to assist with its scrutiny of the Driving Instructors (Registration) Bill (“the Bill”). The Bill will be introduced in the House of Commons on 27 January 2016. This memorandum identifies the provisions of the Bill that confer powers to make delegated legislation. It explains in each case why the power has been taken and explains the nature of, and the reason for, the procedure selected.

### **Purpose and effect of the Bill**

2. In Great Britain it is unlawful for a person to conduct driving instruction for payment unless they are an "Approved Driving Instructor" commonly known as an "ADI". To become registered as an ADI a person currently has to pass 3 examinations that test driving theory, driving ability and instructional skill, they must also be medically fit to instruct and be a "fit and proper person" to be entered on the register.
3. This Bill contains two measures to simplify the registration of driving instructors. The first allows a driving instructor to request voluntary removal from the register of driving instructors. The second simplifies the process for rejoining the register where a person's registration has lapsed.

#### Rejoining the register after registration has lapsed:

4. An ADI's registration will expire and they will be removed from the register after 4 years if their registration is not renewed.
5. Currently where an ADI has been off the register for less than a year, they can reapply, and will be added back onto the register, subject to conduct and medical fitness requirements. However if the ADI's registration had lapsed for more than a year at the time when they reapplied they would have to retake the three ADI qualification exams.
6. The Bill simplifies the arrangements for people who wish to reapply to be put back on the register who had been off the register for one to four years. Instead of requiring full requalification (as we do currently) they will instead be required to take a “standards check” and if they pass they will be allowed to return to the register (subject to conduct and health requirements). The standards check these returning instructors would take would be the same as the standards check that practicing ADIs currently take during the period of their registration to ensure their continued competence to instruct.

7. A person applying to rejoin the register by this route would have a maximum of three attempts at passing the standards check. If a person failed three times then they would have to repeat the full re-qualification process if they wanted to re-join the Register.

Voluntary Removal from the Register:

8. An ADI's name is added to the register on qualification, where it will remain until the registration expires (essentially 4 years after the last period of registration commenced) or is extended. The only way a person can currently be removed is if the registration runs out or if they are removed by the Registrar for conduct, competence or other safety reasons.
9. The Bill amends the current arrangements to enable a driving instructor to request voluntary removal from the Register at any point during the registration period.
10. To prevent the new voluntary removal ability from being combined with the ability to apply to rejoin the register within 12 months without sitting any test from being abused by anyone seeking to avoid the standards check, the Bill creates a variation on the rule for rejoining the register within 12 months of removal. Where a person came off the register as a result of voluntary removal they can only rejoin the register within 12 months without taking any tests if they have taken a standards check in the last 4 years. If it has been more than 4 years since the last standards check then they will need to take a standards check before they can rejoin the register.

**Delegated Powers**

11. The Bill contains five delegated powers –
  - a. an extension to an un-commenced power in Schedule 6 to the Road Safety Act 2006 to allow “standards checks” to be prescribed as a condition for re-joining the register (instead of re-sitting qualification examinations) – this power would come into force in the event of the commencement of Schedule 6 to the Road Safety Act 2006;
  - b. a power inserted into Schedule 6 to the Road Safety Act to make provision in regulations for the requirements for reinstatement of instructors who previously requested voluntary removal from the register – this power would come into force in the event of the commencement of Schedule 6 to the Road Safety Act 2006;
  - c. a power to make consequential amendments;
  - d. a power to make transitional, transitory and saving provisions;
  - e. a power to make commencement regulations.

**Clause 3: Re-entry in the register following expiry of registration**

*Power conferred on:* the Secretary of State

*Power exercised by:* Regulations

*Parliamentary Procedure: negative procedure.*

#### Context and Purpose

12. This provision amends the un-commenced version of section 126 (duration of registration) of the Road Traffic Act 1988 - contained in Schedule 6 to the Road Safety Act 2006 - that would replace the current version of s126 if Schedule 6 to the Road Safety Act was brought into force. This replacement version of section 126 in Schedule 6 would allow the Secretary of State to prescribe any or all of the initial qualification tests as a requirement for re-joining the register but would not currently allow standards checks to be prescribed.
13. In order to still allow standards checks to be required for rejoining the register, in the event that Schedule 6 gets brought into force, this clause amends the power in the replacement section 126 so that standard checks could also be prescribed under it as a condition of re-entry. The new sub-section (4)(a) inserted by the clause simply restates the power in the pre-existing sub-section (4), it is the new sub-section (4)(b) which creates the ability to prescribe standards checks.

#### Justification for taking the power

14. Unlike the current version of the Road Traffic Act 1988 - under the Road Traffic Act 1988 (as it would be if amended by Schedule 6 to the Road Safety Act 2006) the conditions to be applied when a person re-joins the register are set in regulations. We need to ensure that these regulation making powers (in the Road Safety Act 2006 amended version of the Act) would allow the continuation of the standards check route to re-entry that we are introducing in Clause 1 of this Bill.

#### Justification for the procedure

15. We are making a small amendment to an existing regulation making power which follows the negative procedure (as per sub-section 195(3) of the Road Traffic Act 1988 all regulations made under Road Traffic Act 1988 powers, other than those listed in that subsection follow the negative procedure). Nothing in the content of the small alteration we are making to the power would appear to justify departing from the existing procedures.

#### **Clause 4: Voluntary termination of registration and subsequent re-registration**

*Power conferred on: the Secretary of State*

*Power exercised by: Regulations*

*Parliamentary Procedure: negative procedure.*

#### Context and Purpose

16. This provision amends the un-commenced Schedule 6 to the Road Safety Act 2006 to add in a different version of section 128AZA to be commenced in the event of the rest of Schedule 6 to the Road Safety Act 2006 being commenced. This Schedule 6 version of section 128AZA contains a power at section 128AZA(6) to prescribe in regulations the conditions for readmission to the register where someone left the register because of voluntary removal.
17. Schedule 6 to the Road Safety Act already contains a provision (discussed above in relation to Clause 3) that allows conditions for re-entry to the register when a person's registration expired to be set in regulations. This clause mirrors that power so that requirements for re-entry to the register when a person's registration has ended because of voluntary removal can also be set in regulations.

#### Justification for taking the power

18. Under the Road Traffic Act 1988 (as it would be if amended by Schedule 6 to the Road Safety Act 2006) the conditions to be applied when a person re-enters the register following their registration expiring are to be set in regulations. This Bill introduces the option of requesting removal from the register so provision needs to be made for how those persons who requested voluntary removal can re-enter the register if Schedule 6 to the Road Safety Act 2006 was commenced. Where rules on re-entry after expiry are already being set in regulations it makes sense that rules on re-entry after voluntary removal will be set in the same way.

#### Justification for the procedure

19. We have used the same negative procedure here as is used for the power to set re-entry conditions for instructors who were removed from the register after their registration expired (as per sub-section 195(3) of the Road Traffic Act 1988 all regulations made under Road Traffic Act 1988 powers, other than those listed in that subsection follow the negative procedure). There appears to be no compelling reason to depart from the procedure used for setting the re-entry conditions for instructors whose registration expired for setting the procedure for setting the re-entry conditions for those persons whose registration ended as a result of voluntary removal.

### **Clause 5: Consequential amendments, repeals and revocations**

*Power conferred on:* the Secretary of State

*Power exercised by:* Regulations

*Parliamentary Procedure:* negative procedure – where only secondary legislation is amended, affirmative procedure if primary legislation is amended.

#### Context and Purpose

20. The provision takes a power to make consequential amendments to primary and secondary legislation.

Justification for taking the power

21. This is a standard provision to ensure that any consequential amendments needed as a result of the Bill can be made.

Justification for the procedure

22. Where a consequential amendment power is used to amend primary legislation it is appropriate to use the affirmative procedure. Where a consequential amendment power is amending secondary legislation only - the normal practice, which there appears to be no reason to depart from here, is to use the negative procedure. Where we are amending primary and secondary legislation at the same time, we take the view that it would be sensible to include the amendments in one instrument and adopt the affirmative procedure.

**Clause 6: Transitional, transitory or saving provision**

*Power conferred on:* the Secretary of State

*Power exercised by:* Regulations

*Parliamentary Procedure:* none

Context and Purpose

23. The provision takes a power to make transitional, transitory and saving provisions.

Justification for taking the power

24. This is a relatively common power to enable the provisions contained in a Bill to be brought into force in an orderly manner.

Justification for the procedure

25. Powers to make transitional provisions are often included as part of the power to make commencement orders or commencement regulations and, as such, are not subject to any parliamentary procedure on the grounds that Parliament has already approved the principle of the provisions in the Bill by enacting them. Although drafted as a free-standing provision in this instance the same principle applies and, accordingly, the power is not subject to any Parliamentary procedure.

**Clause 7: Extent, commencement and short title**

*Power conferred on:* the Secretary of State

*Power exercised by:* Regulations

*Parliamentary Procedure:* none.

Context and Purpose

26. The provision contains a standard provision for the Secretary of State to bring provisions into force by commencement regulations.

Justification for taking the power

27. Commencement by regulations allows substantive provisions to be brought into force at a convenient time.

Justification for the procedure

28. As is usual with commencement powers regulations made under this clause are not subject to any Parliamentary procedures. Parliament has approved the principle of the provisions to be commenced by enacting them.

**Department for Transport**  
**29 January 2016**









ISBN 978-1-4741-2775-2



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