

CRIME (INTERNATIONAL CO-OPERATION) ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3: Road Traffic

Chapter 1: Convention on Driving Disqualifications

Section 54: Application of section 55

120. This section prescribes when the duty in section 55 to notify a central authority of an EU Member State about a disqualification will apply. The duty covers a driving disqualification imposed in the UK on a resident of another Member State. Schedule 3 lists the road traffic offences which, in the circumstances specified, would require notification of disqualification. A minimum period of disqualification must apply in respect of the offences in Part 2 but not Part 1.
121. The requirement will only apply to a disqualification which is no longer subject to appeal. The section also provides for section 55 not to apply in circumstances prescribed in regulations. Where another Member State has declared that it will apply, in full or in part, the discretionary conditions to the recognition of disqualifications described in Article 6(2) of the Convention, regulations will state when notification is not required in respect of that State.

Section 55: Duty to give notice to foreign authorities of driving disqualification of a non-UK resident

122. This section places a duty on the appropriate Minister (the Secretary of State in Great Britain or the Department of the Environment in Northern Ireland) in the circumstances specified in the previous section to notify a driving disqualification to the authorities in the Member State where the offender is normally resident. The notice must include information required by the Convention to allow the central authority to locate the offender, together with details of the offence and the order made against him. The appropriate Minister is also required to provide evidence that an offender who did not take part in the proceedings was properly notified of them. This will usually have been by way of a summons and subject to the normal conditions of service. Under Article 6(1) (e) of the Convention, the State of residence must refuse to recognise a disqualification if it considers that the person concerned did not have an adequate opportunity to defend himself. If the period of disqualification is reduced or removed by a court subsequent to the appropriate Minister sending his notification, he must also inform the central authority.

Section 56: Application of section 57

123. This section describes when under section 57 a driving disqualification, imposed in another Member State on a person normally resident in the UK, will be enforced in the

UK. This will be the case where the offence which gives rise to the disqualification constitutes one of the categories of conduct specified in the Convention, or other conduct constituting an offence which results in a disqualification of at least the minimum period. The offender must have been duly notified of, and entitled to take part in, the proceedings and the disqualification must not be subject to any further appeal in the State of the offence. A disqualification will not be enforced if the relevant proceedings in the State of offence were brought later than the time provided for the commencement of summary proceedings for a corresponding offence in the United Kingdom. This accords with Article 6(1)(d) of the Convention which precludes enforcement of a disqualification where the period of limitation would have expired under the state of residence's legislation. The appropriate Minister may make regulations about the correspondence between UK offences and other States' offences.

Sections 57 and 58: Recognition in the UK of foreign driving disqualifications

124. These sections allow for a person in the circumstances set out in the previous section, and to whom the appropriate Minister sends notification, to be disqualified from driving in the UK. The appropriate Minister should be provided under the Convention by the State of offence with the information he requires to enforce the disqualification. The appropriate Minister has discretion as to whether to enforce a disqualification where the unexpired period is less than one month. Where the disqualification is effective until a condition is satisfied, the offender is disqualified until the condition is satisfied. The UK disqualification takes effect 21 days after notification to the offender. However, the appropriate Minister has power to substitute a longer period. The intention is that the period at the end of which the disqualification takes effect should be the same as the period for appealing under section 59.
125. The Convention requires any part of the disqualification already served in the State of the offence to be taken into account in recognising the disqualification in the offender's State of residence. Section 57 grants the appropriate Minister power to make regulations to prescribe how the unexpired period of disqualification is to be determined. Although the normal appeals process will have been exhausted before the disqualification is notified to the UK, if the State of the offence removes the disqualification at any time during the unexpired period, the disqualification will also cease to have effect in the UK at that time.

Sections 59 to 62: Appeal against Disqualification and Power of Appellate Courts to Suspend Disqualification

126. **Section 59** enables a person disqualified under section 57 to appeal on limited grounds to their local magistrates' court in England and Wales, the sheriff court in Scotland or a court of summary jurisdiction in Northern Ireland. The appeal is only concerned with the imposition of the disqualification under section 57 and has no bearing on the conviction and disqualification in the State of the offence. An appeal must be made within 21 days of the notice of disqualification being issued (although the appropriate Minister may by regulations substitute a longer period). Separate provision is made in sections 60 to 62 for the appellate courts in each part of the UK, where the court thinks fit, to suspend the disqualification and notify the appropriate Minister that it has done so. If the court allows the appeal it is also required to notify the appropriate Minister.

Sections 63 to 65: Production of Licence

127. **Sections 63** and **64** require a licence holder given notice of disqualification under section 57 to deliver his licence and counterpart to the appropriate Minister within 21 days of the notice being given. It is an offence not to comply with this requirement. However, there are circumstances set out in sections 63 and 64 where an offence will not be committed where the person is not in possession of his licence or has applied for a new licence. Where a Community licence is produced to the appropriate Minister by a person disqualified under section 57, the appropriate Minister is required to send the

details of the holder and the disqualification to the authority in the relevant State which issued the licence. The appropriate Minister will return the licence to the holder at the appropriate time specified in section 65(4) unless the driver would not be authorised to drive in Great Britain or Northern Ireland, in which case the licence will be returned to the issuing authority in the relevant State.

Sections 66 and 67: Effect of disqualification and Rule for determining end of period of disqualification

128. The licence is treated as revoked from the beginning of the period of UK disqualification, subject to any suspension which is granted. Similarly, any period when a disqualification has been suspended, or the driver not disqualified, will not count towards determining the end of the period of disqualification.

Sections 68 and 69: Endorsement of Licence

129. The particulars of a disqualification under section 57 must be endorsed on the counterpart of a licence. The endorsement remains effective for four years from conviction in all cases. A person may obtain a licence free from the endorsement at the end of this period. If a disqualification is removed under section 57(6), the appropriate Minister must endorse the counterpart of the licence.

Section 70: Duty of appropriate Minister to inform competent authority

130. Under this section, where the appropriate Minister has been notified of a disqualification under the Convention, in accordance with the Convention, he is required to inform the competent authority of the State where the offence took place of the details of the disqualification imposed in the UK or, if he has not recognised the disqualification, he must inform the State of his reasons.

Section 71: Notices

131. This specifies how a notice which is required to be sent under this Chapter to an individual, or a Community licence which is required to be returned to its holder, may be delivered to that person. The latest address known to the appropriate Minister will be the proper address for this purpose.

Chapter 2: Mutual Recognition with the United Kingdom

132. Chapter 2, together with its consequential amendments, removes driver licensing anomalies between Great Britain and Northern Ireland, so as to give the United Kingdom a more coherent system for the implementation of the Convention. It provides that a person disqualified from holding or obtaining a driving licence in Northern Ireland, the Isle of Man, the Channel Islands or Gibraltar is similarly disqualified in Great Britain. The Secretary of State's powers to revoke a licence either on grounds of medical disability or during a new driver's probationary period are extended to holders of Northern Ireland driving licences in Great Britain.

Section 76: Recognition in Great Britain of disqualifications in Northern Ireland etc.

133. This section amends the Road Traffic Act 1988 ("RTA 1988") to introduce the recognition in Great Britain of driving disqualifications imposed in Northern Ireland, the Isle of Man, the Channel Islands and Gibraltar. So long as a person is subject to a driving disqualification imposed in Northern Ireland, the Isle of Man, the Channel Islands or Gibraltar, he will also be disqualified in Great Britain. This remedies an existing anomaly in the UK driver licensing system, under which none of these jurisdictions recognised driving disqualifications imposed in any of the others. Reciprocal legislation will be needed in these territories for mutual recognition: legislation will be implemented in Northern Ireland by Order in Council under

section 92 due to the current suspension of the Assembly; the Isle of Man has already implemented legislation.

Section 77: Endorsement of counterparts issued to Northern Ireland licence holders

134. This section provides that the holder of a Northern Ireland licence committing a road traffic offence in Great Britain will be able to opt for the fixed penalty system for road traffic offences, like the holder of a Great Britain licence, avoiding the inconveniences of a prosecution. The fixed penalty option is not currently available in Great Britain to the holder of a Northern Ireland licence. The section facilitates endorsement of a Northern Ireland licence for a road traffic offence or offences committed in Great Britain for which the fixed penalty system is applied.
135. Subsection (1) inserts a new section 109A of the RTA 1988, enabling the Secretary of State to issue a driving licence counterpart to the holder of a Northern Ireland licence so as to enable endorsement by authorities in Great Britain. The section makes provisions similar to those already applied to the holder of a European Community driving licence other than from Great Britain or Northern Ireland. It enables the Secretary of State to endorse a Northern Ireland licence, obliging him to return it to the holder. Section 109A(5) empowers the Secretary of State to require surrender of the counterpart or delivery of the licence to him, and to serve notice in writing that such delivery must be made and information provided within 28 days. It makes it an offence to drive a motor vehicle on a road having unreasonably failed to surrender the counterpart for endorsement or for correction of particulars of the holder's name or address.
136. Subsection (2) inserts new sections 91ZA and 91ZB into the Road Traffic Offenders Act 1988 ("RTOA 1988"), setting out the application of that Act to Northern Ireland licence holders. The provisions of the RTOA 1988 to be applied to Northern Ireland licence holders are those which apply to them the fixed penalty system for traffic offences committed in Great Britain. The court procedures followed when penalty points are endorsed on a driving licence are extended to Northern Ireland licences. In particular, this includes various aspects of procedure when a driver is both disqualified and gains penalty points at the same time.

Section 78: Prohibition on holding or obtaining Great Britain and Northern Ireland licences

137. Subsection (2) prevents a Northern Ireland licence holder who obtains a Great Britain licence from continuing to be able to drive in Great Britain by virtue of the Northern Ireland licence. It provides that, on surrender of the Northern Ireland licence when a Great Britain licence is granted, the authorisation to drive a vehicle in Great Britain by virtue of the Northern Ireland licence ceases, and that the Secretary of State must send the Northern Ireland licence and its counterpart back to the Northern Ireland authorities.
138. Subsection (3) is in respect of reciprocal provisions intended in Northern Ireland law. It requires the Secretary of State, where he is satisfied that a Northern Ireland licence has been granted to the holder of a Great Britain licence and he has received the Great Britain licence, to serve written notice on the person concerned that the Great Britain licence is revoked.
139. Subsection (4) provides, in order to prevent duplication of licences, that a person holding a Northern Ireland licence to drive a particular class or classes of vehicle is disqualified from holding or obtaining a Great Britain licence to drive a motor vehicle of that class or classes, if he does not surrender the Northern Ireland licence to the Secretary of State and remains authorised to drive in Great Britain as a holder of that licence.

Section 79: Disability and prospective disability

140. This section amends the provisions of the RTA 1988 relating to disability and prospective disability of a licence holder. Subsection (2) inserts a new section 109B into the RTA 1988, which provides for revocation by the Secretary of State of the authorisation to drive in Great Britain conferred by a Northern Ireland licence, on grounds of disability or prospective disability. Currently the Secretary of State has a power to revoke a driving licence issued in Great Britain as set out at section 93 of the RTA 1988. The new provisions parallel those which already exist for revocation of a Great Britain licence on medical grounds, except that the revocation extends only to the right to drive in Great Britain conferred by virtue of section 109(1) RTA 1988. The Secretary of State may require the Northern Ireland licence holder to deliver up his licence and the relevant counterparts, so that it may be returned to the Northern Ireland authorities.
141. Subsection (2) also inserts a new section 109C into the RTA 1988. This amendment places the holders of Northern Ireland licences, if resident in Great Britain, under the same duty as Great Britain licence holders to provide information relating to disabilities.
142. Subsection (3) makes provision for Great Britain licences, where the right to drive in Northern Ireland has been revoked on medical grounds there under a corresponding provision of Northern Ireland law. In this event the Secretary of State may revoke the licence.
143. In either circumstance, the Secretary of State may on application grant a new licence for a period which he determines. (For example, in the case of an individual suffering from a degenerative disease likely progressively to impair his or her ability to drive, a short period licence might be granted.)