



Road Traffic Offenders Act 1988

1988 CHAPTER 53

PART II

SENTENCE

Introductory

27 Production of licence

- (1) Where a person who is the holder of a licence is convicted of an offence involving obligatory endorsement, the court must, before making any order under section 44 of this Act, require the licence to be produced to it.
- (2) Where a magistrates' court—
 - (a) commits a person who is the holder of a licence to the Crown Court, under section 56 of the Criminal Justice Act 1967 or any enactment to which that section applies, to be dealt with in respect of an offence involving obligatory endorsement, and
 - (b) does not make an order in his case under section 26(1) of this Act, the Crown Court must require the licence to be produced to it.
- (3) If the holder of the licence has not caused it to be delivered, or posted it, in accordance with section 7 of this Act and does not produce it as required then, unless he satisfies the court that he has applied for a new licence and has not received it—
 - (a) he is guilty of an offence, and
 - (b) the licence shall be suspended from the time when its production was required until it is produced to the court and shall, while suspended, be of no effect.
- (4) Subsection (3) above does not apply where the holder of the licence—
 - (a) has caused a current receipt for the licence issued under section 56 of this Act to be delivered to the clerk of the court not later than the day before the date appointed for the hearing, or

- (b) has posted such a receipt, at such time that in the ordinary course of post it would be delivered not later than that day, in a letter duly addressed to the clerk and either registered or sent by the recorded delivery service, or
 - (c) surrenders such a receipt to the court at the hearing,
- and produces the licence to the court immediately on its return.

28 Penalty points to be attributed to an offence

- (1) Where a person is convicted of an offence involving obligatory or discretionary disqualification, the number of penalty points to be attributed to the offence, subject to subsection (2) below, is—
 - (a) in the case of an offence under a provision of the Traffic Acts specified in column 1 of Part I of Schedule 2 to this Act or an offence specified in column 1 of Part II of that Schedule, the number shown against the provision or offence in the last column or, where a range of numbers is so shown, a number falling within the range, and
 - (b) in the case of an offence committed by aiding, abetting, counselling or procuring, or inciting to the commission of, an offence involving obligatory disqualification, ten penalty points.
- (2) Where a person is convicted of two or more such offences, the number of penalty points to be attributed to those of them that were committed on the same occasion is the number or highest number that would be attributed on a conviction of one of them.
- (3) The Secretary of State may by order made by statutory instrument—
 - (a) alter the number of penalty points shown in subsection (1)(b) above or against a provision or offence specified in that Schedule or, where a range of numbers is shown, alter that range, and
 - (b) provide for different numbers to be so shown in respect of the same offence committed in different circumstances;but no such order shall be made unless a draft of it has been laid before Parliament and approved by resolution of each House of Parliament.

29 Penalty points to be taken into account on conviction

- (1) Where a person is convicted of an offence involving obligatory or discretionary disqualification, the penalty points to be taken into account on that occasion are (subject to subsection (2) below)—
 - (a) any that are to be attributed to the offence or offences of which he is convicted, and
 - (b) any that were on a previous occasion ordered to be endorsed on any licence held by him, unless the offender has since that occasion and before the conviction been disqualified under section 34 or 35 of this Act.
- (2) If any of the offences was committed more than three years before another, the penalty points in respect of that offence shall not be added to those in respect of the other.

30 Penalty points: modification where fixed penalty also in question

- (1) Sections 28 and 29 of this Act shall have effect subject to this section in any case where—

- (a) a person is convicted of an offence involving obligatory or discretionary disqualification, and
 - (b) the court is satisfied that his licence has been or is liable to be endorsed under section 57 or 77 of this Act in respect of an offence (referred to in this section as the “connected offence”) committed on the same occasion as the offence of which he is convicted.
- (2) Subject to section 28(2) of this Act, the number of penalty points to be attributed to the offence of which he is convicted is—
- (a) the number of penalty points to be attributed to that offence under section 28(1) of this Act apart from this section, less
 - (b) the number of penalty points required to be endorsed on his licence under section 57 or 77 of this Act in respect of the connected offence.
- (3) For the purposes of subsection (2) above, where a range of numbers is shown in the last column of Part I of Schedule 2 to this Act against the provision of the Traffic Acts under which his offence is committed or punishable or in Part II of that Schedule against the offence of which he is convicted, the number of penalty points referred to in subsection (2)(a) above shall be taken to be a number falling within that range determined by the court as the number of penalty points to be attributed to the offence under section 28(1) of this Act apart from this section.

31 Court may take particulars endorsed on licence into consideration

- (1) Where a person is convicted of an offence involving obligatory endorsement and his licence is produced to the court—
- (a) any existing endorsement on his licence is prima facie evidence of the matters endorsed, and
 - (b) the court may, in determining what order to make in pursuance of the conviction, take those matters into consideration.
- (2) This section has effect notwithstanding anything in sections 311(5) and 357(1) of the Criminal Procedure (Scotland) Act 1975 (requirements as to notices of penalties and previous convictions).

32 In Scotland, court may take extract from licensing records into account

- (1) Subsections (2) to (5) below apply where a person is convicted in Scotland of an offence involving obligatory endorsement but his licence is not produced to the court.
- (2) The court may, in determining what order to make in pursuance of the conviction, take into consideration (subject to subsection (3) below)—
- (a) particulars of any previous conviction or disqualification pertaining to him, and
 - (b) any penalty points ordered to be endorsed on any licence held by him which are to be taken into account under section 29 of this Act,
- which are specified in a document purporting to be a note of information contained in the records maintained by the Secretary of State in connection with his functions under Part III of the Road Traffic Act 1988.
- (3) If the prosecutor lays before the court such a document as is mentioned in subsection (2) above, the court or the clerk of court must ask the accused if he admits the accuracy of the particulars relating to him contained in the document.

- (4) Where the accused admits the accuracy of any particulars, the prosecutor need not adduce evidence in proof of those particulars, and the admission must be entered in the record of the proceedings.
- (5) Where the accused does not admit the accuracy of any particulars, the prosecutor must, unless he withdraws those particulars, adduce evidence in proof of them, either then or at any other time.
- (6) This section has effect notwithstanding anything in sections 311(5) and 357(1) of the Criminal Procedure (Scotland) Act 1975 (requirements as to notices of penalties and previous convictions).

Fine and imprisonment

33 Fine and imprisonment

- (1) Where a person is convicted of an offence against a provision of the Traffic Acts specified in column 1 of Part I of Schedule 2 to this Act or regulations made under any such provision, the maximum punishment by way of fine or imprisonment which may be imposed on him is that shown in column 4 against the offence and (where appropriate) the circumstances or the mode of trial there specified.
- (2) Any reference in column 4 of that Part to a period of years or months is to be construed as a reference to a term of imprisonment of that duration.

Disqualification

34 Disqualification for certain offences

- (1) Where a person is convicted of an offence involving obligatory disqualification, the court must order him to be disqualified for such period not less than twelve months as the court thinks fit unless the court for special reasons thinks fit to order him to be disqualified for a shorter period or not to order him to be disqualified.
- (2) Where a person is convicted of an offence involving discretionary disqualification, the court may order him to be disqualified for such period as the court thinks fit.
- (3) Where a person convicted of an offence under any of the following provisions of the Road Traffic Act 1988, that is—
 - (a) section 4(1) (driving or attempting to drive while unfit),
 - (b) section 5(1)(a) (driving or attempting to drive with excess alcohol), and
 - (c) section 7(6) (failing to provide a specimen) where that is an offence involving obligatory disqualification,has within the ten years immediately preceding the commission of the offence been convicted of any such offence, subsection (1) above shall apply in relation to him as if the reference to twelve months were a reference to three years.
- (4) Where a person is convicted of an offence under section 1 of the Road Traffic Act 1988 (causing death by reckless driving), subsection (1) above shall apply in relation to him as if the reference to twelve months were a reference to two years.

- (5) The preceding provisions of this section shall apply in relation to a conviction of an offence committed by aiding, abetting, counselling or procuring, or inciting to the commission of, an offence involving obligatory disqualification as if the offence were an offence involving discretionary disqualification.
- (6) This section is subject to section 48 of this Act.

35 Disqualification for repeated offences

- (1) Where—
- (a) a person is convicted of an offence involving obligatory or discretionary disqualification, and
 - (b) the penalty points to be taken into account on that occasion number twelve or more,
- the court must order him to be disqualified for not less than the minimum period unless the court is satisfied, having regard to all the circumstances, that there are grounds for mitigating the normal consequences of the conviction and thinks fit to order him to be disqualified for a shorter period or not to order him to be disqualified.
- (2) The minimum period referred to in subsection (1) above is—
- (a) six months if no previous disqualification imposed on the offender is to be taken into account, and
 - (b) one year if one, and two years if more than one, such disqualification is to be taken into account;
- and a previous disqualification imposed on an offender is to be taken into account if it was imposed within the three years immediately preceding the commission of the latest offence in respect of which penalty points are taken into account under section 29 of this Act.
- (3) Where an offender is convicted on the same occasion of more than one offence involving obligatory or discretionary disqualification—
- (a) not more than one disqualification shall be imposed on him under subsection (1) above,
 - (b) in determining the period of the disqualification the court must take into account all the offences, and
 - (c) for the purposes of any appeal any disqualification imposed under subsection (1) above shall be treated as an order made on the conviction of each of the offences.
- (4) No account is to be taken under subsection (1) above of any of the following circumstances—
- (a) any circumstances that are alleged to make the offence or any of the offences not a serious one,
 - (b) hardship, other than exceptional hardship, or
 - (c) any circumstances which, within the three years immediately preceding the conviction, have been taken into account under that subsection in ordering the offender to be disqualified for a shorter period or not ordering him to be disqualified.

- (5) References in this section to disqualification do not include a disqualification imposed under section 26 of this Act or section 44 of the Powers of Criminal Courts Act 1973 (disqualification by Crown Court where vehicle used for commission of offence).
- (6) In relation to Scotland, references in this section to the court include the district court.
- (7) This section is subject to section 48 of this Act.

36 Disqualification until test is passed

- (1) Where a person is convicted of an offence involving obligatory or discretionary disqualification, the court may order him to be disqualified until he passes the test of competence to drive prescribed by virtue of section 89(3) of the Road Traffic Act 1988.
- (2) That power is exercisable by the court whether or not the person convicted has previously passed that test and whether or not the court makes an order under section 34 or 35 of this Act.
- (3) A disqualification by virtue of an order under subsection (1) above shall be deemed to have expired on production to the Secretary of State of evidence, in such form as may be prescribed by regulations under section 105 of the Road Traffic Act 1988, that the person disqualified has passed that test since the order was made.
- (4) On the issue of a licence to a person who stands disqualified by an order under subsection (1) above, there shall be added to the endorsed particulars of the disqualification a statement that the person disqualified has passed that test since the order was made.
- (5) This section is subject to section 48 of this Act.

37 Effect of order of disqualification

- (1) Where the holder of a licence is disqualified by an order of a court, the licence shall be treated as being revoked with effect from the beginning of the period of disqualification.
- (2) Where the holder of the licence appeals against the order and the disqualification is suspended under section 39 of this Act, the period of disqualification shall be treated for the purpose of subsection (1) above as beginning on the day on which the disqualification ceases to be suspended.
- (3) Notwithstanding anything in Part III of the Road Traffic Act 1988, a person disqualified by an order of a court under section 36(1) of this Act is (unless he is also disqualified otherwise than by virtue of such an order) entitled to obtain and to hold a provisional licence and to drive a motor vehicle in accordance with the conditions subject to which the provisional licence is granted.

38 Appeal against disqualification

- (1) A person disqualified by an order of a magistrates' court under section 34 or 35 of this Act may appeal against the order in the same manner as against a conviction.
- (2) A person disqualified by an order of a court in Scotland may appeal against the order in the same manner as against a sentence.

39 Suspension of disqualification pending appeal

- (1) Any court in England and Wales (whether a magistrates' court or another) which makes an order disqualifying a person may, if it thinks fit, suspend the disqualification pending an appeal against the order.
- (2) The court by or before which a person disqualified by an order of a court in Scotland was convicted may, if it thinks fit, suspend the disqualification pending an appeal against the order.
- (3) Where a court exercises its power under subsection (1) or (2) above, it must send notice of the suspension to the Secretary of State.
- (4) The notice must be sent in such manner and to such address and must contain such particulars as the Secretary of State may determine.

40 Power of appellate courts in England and Wales to suspend disqualification

- (1) This section applies where a person has been convicted by or before a court in England and Wales of an offence involving obligatory or discretionary disqualification and has been ordered to be disqualified; and in the following provisions of this section—
 - (a) any reference to a person ordered to be disqualified is to be construed as a reference to a person so convicted and so ordered to be disqualified, and
 - (b) any reference to his sentence includes a reference to the order of disqualification and to any other order made on his conviction and, accordingly, any reference to an appeal against his sentence includes a reference to an appeal against any order forming part of his sentence.
- (2) Where a person ordered to be disqualified—
 - (a) appeals to the Crown Court, or
 - (b) appeals or applies for leave to appeal to the Court of Appeal,against his conviction or his sentence, the Crown Court or, as the case may require, the Court of Appeal may, if it thinks fit, suspend the disqualification.
- (3) Where a person ordered to be disqualified has appealed or applied for leave to appeal to the House of Lords—
 - (a) under section 1 of the Administration of Justice Act 1960 from any decision of a Divisional Court of the Queen's Bench Division which is material to his conviction or sentence, or
 - (b) under section 33 of the Criminal Appeal Act 1968 from any decision of the Court of Appeal which is material to his conviction or sentence,the Divisional Court or, as the case may require, the Court of Appeal may, if it thinks fit, suspend the disqualification.
- (4) Where a person ordered to be disqualified makes an application in respect of the decision of the court in question under section 111 of the Magistrates' Courts Act 1980 (statement of case by magistrates' court) or section 28 of the Supreme Court Act 1981 (statement of case by Crown Court) the High Court may, if it thinks fit, suspend the disqualification.
- (5) Where a person ordered to be disqualified—
 - (a) applies to the High Court for an order of certiorari to remove into the High Court any proceedings of a magistrates' court or of the Crown Court, being

Status: This is the original version (as it was originally enacted).

proceedings in or in consequence of which he was convicted or his sentence was passed, or

(b) applies to the High Court for leave to make such an application, the High Court may, if it thinks fit, suspend the disqualification.

- (6) Any power of a court under the preceding provisions of this section to suspend the disqualification of any person is a power to do so on such terms as the court thinks fit.
- (7) Where, by virtue of this section, a court suspends the disqualification of any person, it must send notice of the suspension to the Secretary of State.
- (8) The notice must be sent in such manner and to such address and must contain such particulars as the Secretary of State may determine.

41 Power of High Court of Justiciary to suspend disqualification

- (1) This section applies where a person has been convicted by or before a court in Scotland of an offence involving obligatory or discretionary disqualification and has been ordered to be disqualified; and in the following provisions of this section—
- (a) any reference to a person ordered to be disqualified is to be construed as a reference to a person so convicted and so ordered to be disqualified, and
- (b) any reference to his sentence includes a reference to the order of disqualification and to any other order made on his conviction and, accordingly, any reference to an appeal against his sentence includes a reference to an appeal against any order forming part of his sentence.
- (2) Where a person ordered to be disqualified appeals to the High Court of Justiciary, whether on appeal against a summary conviction or a conviction on indictment or his sentence, the court may, if it thinks fit, suspend the disqualification on such terms as it thinks fit.
- The powers conferred by this subsection on the court may be exercised by any single judge of the court.
- (3) Where, by virtue of this section, the High Court suspends the disqualification of any person, it must send notice of the suspension to the Secretary of State.
- (4) The notice must be sent in such manner and to such address and must contain such particulars as the Secretary of State may determine.

42 Removal of disqualification

- (1) Subject to the provisions of this section, a person who by an order of a court is disqualified may apply to the court by which the order was made to remove the disqualification.
- (2) On any such application the court may, as it thinks proper having regard to—
- (a) the character of the person disqualified and his conduct subsequent to the order,
- (b) the nature of the offence, and
- (c) any other circumstances of the case,
- either by order remove the disqualification as from such date as may be specified in the order or refuse the application.

- (3) No application shall be made under subsection (1) above for the removal of a disqualification before the expiration of whichever is relevant of the following periods from the date of the order by which the disqualification was imposed, that is—
- (a) two years, if the disqualification is for less than four years,
 - (b) one half of the period of disqualification, if it is for less than ten years but not less than four years,
 - (c) five years in any other case;
- and in determining the expiration of the period after which under this subsection a person may apply for the removal of a disqualification, any time after the conviction during which the disqualification was suspended or he was not disqualified shall be disregarded.
- (4) Where an application under subsection (1) above is refused, a further application under that subsection shall not be entertained if made within three months after the date of the refusal.
- (5) If under this section a court orders a disqualification to be removed, the court—
- (a) must cause particulars of the order to be endorsed on the licence, if any, previously held by the applicant, and
 - (b) may in any case order the applicant to pay the whole or any part of the costs of the application.
- (6) The preceding provisions of this section shall not apply where the disqualification was imposed by order under section 36(1) of this Act.

43 Rule for determining end of period of disqualification

In determining the expiration of the period for which a person is disqualified by an order of a court made in consequence of a conviction, any time after the conviction during which the disqualification was suspended or he was not disqualified shall be disregarded.

Endorsement

44 Endorsement of licences

- (1) Where a person is convicted of an offence involving obligatory endorsement, the court must order there to be endorsed on any licence held by him particulars of the conviction and also—
- (a) if the court orders him to be disqualified, particulars of the disqualification, or
 - (b) if the court does not order him to be disqualified—
 - (i) particulars of the offence, including the date when it was committed, and
 - (ii) the penalty points to be attributed to the offence.
- (2) Where the court does not order the person convicted to be disqualified, it need not make an order under subsection (1) above if for special reasons it thinks fit not to do so.
- (3) In relation to Scotland, references in this section to the court include the district court.
- (4) This section is subject to section 48 of this Act.

45 Effect of endorsement

- (1) An order that any particulars or penalty points are to be endorsed on any licence held by the person convicted shall, whether he is at the time the holder of a licence or not, operate as an order that any licence he may then hold or may subsequently obtain is to be so endorsed until he becomes entitled under subsection (4) below to have a licence issued to him free from the particulars or penalty points.
- (2) On the issue of a new licence to a person, any particulars or penalty points ordered to be endorsed on any licence held by him shall be entered on the licence unless he has become entitled under subsection (4) below to have a licence issued to him free from those particulars or penalty points.
- (3) If a person whose licence has been ordered to be endorsed with any particulars or penalty points applies for or obtains a licence without giving particulars of the order when he has not previously become entitled under subsection (4) below to have a licence issued to him free from those particulars or penalty points, he is guilty of an offence and any licence so obtained shall be of no effect.
- (4) A person whose licence has been ordered to be endorsed is entitled to have a new licence issued to him free from the endorsement if, after the end of the period for which the endorsement remains effective, he applies for a new licence in pursuance of section 97(1) of the Road Traffic Act 1988, surrenders any subsisting licence, pays the fee prescribed by regulations under Part III of that Act and satisfies the other requirements of section 97(1).
- (5) An endorsement ordered on a person's conviction of an offence remains effective (subject to subsections (6) and (7) below)—
 - (a) if an order is made for the disqualification of the offender, until four years have elapsed since the conviction, and
 - (b) if no such order is made, until either—
 - (i) four years have elapsed since the commission of the offence, or
 - (ii) such an order is made.
- (6) Where the offence was one under section 1 or 2 of that Act (causing death by reckless driving and reckless driving), the endorsement remains in any case effective until four years have elapsed since the conviction.
- (7) Where the offence was one—
 - (a) under section 4(1) or 5(1)(a) of that Act (driving when under influence of drink or drugs or driving with alcohol concentration above prescribed limit), or
 - (b) under section 7(6) of that Act (failing to provide specimen) involving obligatory disqualification,the endorsement remains effective until eleven years have elapsed since the conviction.

General

46 Combination of disqualification and endorsement with probation orders and orders for discharge

- (1) Notwithstanding anything in section 13(3) of the Powers of Criminal Courts Act 1973 (conviction of offender placed on probation or discharged to be disregarded for the

purposes of enactments relating to disqualification), a court in England and Wales which on convicting a person of an offence involving obligatory or discretionary disqualification makes—

- (a) a probation order, or
- (b) an order discharging him absolutely or conditionally,

may on that occasion also exercise any power conferred, and must also discharge any duty imposed, on the court by sections 34, 35, 36 or 44 of this Act.

(2) A conviction—

- (a) in respect of which a court in England and Wales has ordered a person to be disqualified, or
- (b) of which particulars have been endorsed on any licence held by him,

is to be taken into account, notwithstanding anything in section 13(1) of the Powers of Criminal Courts Act 1973 (conviction of offender placed on probation or discharged to be disregarded for the purpose of subsequent proceedings), in determining his liability to punishment or disqualification for any offence involving obligatory or discretionary disqualification committed subsequently.

(3) Where—

- (a) a person is charged in Scotland with an offence involving obligatory or discretionary disqualification, and
- (b) the court makes an order in respect of the offence under section 182 or 383 (absolute discharge) or 183 or 384 (probation) of the Criminal Procedure (Scotland) Act 1975,

then, for the purposes of sections 34, 35, 36, 44 and 45 of this Act, he shall be treated as if he had been convicted of an offence of the kind in question and section 191 or, as the case may be, section 392 of that Act shall not apply.

47 Supplementary provisions as to disqualifications and endorsements

- (1) In any case where a court exercises its power under section 34, 35 or 44 of this Act not to order any disqualification or endorsement or to order disqualification for a shorter period than would otherwise be required, it must state the grounds for doing so in open court and, if it is a magistrates' court or, in Scotland, a court of summary jurisdiction, must cause them to be entered in the register (in Scotland, record) of its proceedings.
- (2) Where a court orders the endorsement of any licence held by a person it may and, if it orders him to be disqualified, must, send the licence, on its being produced to the court, to the Secretary of State; and if the court orders the endorsement but does not send the licence to the Secretary of State it must send him notice of the endorsement.
- (3) Where on an appeal against any such order the appeal is allowed, the court by which the appeal is allowed must send notice of that fact to the Secretary of State.
- (4) A notice sent by a court to the Secretary of State in pursuance of this section must be sent in such manner and to such address and contain such particulars as the Secretary of State may determine, and a licence so sent in pursuance of this section must be sent to such address as the Secretary of State may determine.

48 Exemption from disqualification and endorsement for offences against construction and use regulations

Where a person is convicted of an offence under section 42(1) of the Road Traffic Act 1988 (contravention of construction and use regulations) committed in a manner described against that section in column 5 of Part I of Schedule 2 to this Act, the court must not—

- (a) order him to be disqualified, or
- (b) order any particulars or penalty points to be endorsed on any licence held by him,

if he proves that he did not know, and had no reasonable cause to suspect, that the facts of the case were such that the offence would be committed.

49 Offender escaping consequences of endorseable offence by deception

- (1) This section applies where in dealing with a person convicted of an offence involving obligatory endorsement a court was deceived regarding any circumstances that were or might have been taken into account in deciding whether or for how long to disqualify him.

(2) If—

- (a) the deception constituted or was due to an offence committed by that person, and
- (b) he is convicted of that offence,

the court by or before which he is convicted shall have the same powers and duties regarding an order for disqualification as had the court which dealt with him for the offence involving obligatory endorsement but must, in dealing with him, take into account any order made on his conviction of the offence involving obligatory endorsement.

50 Powers of district court in Scotland

Nothing in section 10 of this Act empowers a district court in Scotland in respect of any offence—

- (a) to impose—
 - (i) a penalty of imprisonment which exceeds sixty days, or
 - (ii) a fine which exceeds level 4 on the standard scale, or
- (b) to impose disqualification.