SCHEDULES

SCHEDULE 4

ENDORSEMENT: UNLICENSED AND FOREIGN DRIVERS: CONSEQUENTIAL AMENDMENTS

The Road Traffic Offenders (Northern Ireland) Order 1996 (NI 10)

2. In Article 30(3) (penalty points to be attributed to an offence) for "or 82(4)" substitute ", 63A(6), 82(4) and 82A(6)".

3. In Article 31(1)(b) (penalty points to be taken into account on conviction) after "him" insert "or on his driving record".

4. In Article 32 (penalty points: modification where fixed penalty also in question)–

(a) in paragraph (1)(b)–

(i) after "licence" insert "or his driving record", and

(ii) for "or 82" substitute ", 63A, 82 or 82A";

(b) in paragraph (2)(b)–

(i) after "licence" insert "or on his driving record", and

(ii) for "or 82" substitute ", 63A, 82 or 82A".

5. For Article 33 (court may take particulars endorsed on licence into consideration) substitute–

"**Court may take particulars endorsed into consideration**

33. Where a person is convicted of an offence involving obligatory or discretionary disqualification–

(a) any existing endorsement on the counterpart of his licence or on his driving record 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.".

6. In Article 41 (disqualification until test passed) after paragraph (10) insert–

"(10A) Where a person's driving record is endorsed with particulars of a disqualification under this Article, it shall also be endorsed with the particulars of any test of competence to drive that he has passed since the order of disqualification was made".

7. In Article 47 (removal of disqualification)–

(a) in paragraph (6), for sub-paragraph (a) substitute–

"(a) must–

(i) if particulars of the disqualification were previously endorsed on the counterpart of any licence previously held by the applicant, cause particulars of the order to be endorsed on that counterpart, and

(ii) if particulars of the disqualification were previously endorsed on the driving record of the applicant, send notice of the order to the Department,";

(b) in paragraph (7), for "(6)(a)" substitute "(6)(a)(i)";

(c) after that paragraph insert–

"(7A) If the disqualification was imposed in respect of an offence involving obligatory endorsement, the Department must, on receiving notice of an order under paragraph (6)(a)(ii), make any necessary adjustments to the endorsements on the person's driving record to reflect the order.";

(d) In paragraph (8), after "paragraph" insert "(6)(a)(ii) or".

8. In Article 50 (effect of endorsement)–

(a) in the heading, insert at the end "of counterparts";

(b) in paragraph (1) omit the words ", whether he is at the time the holder of a licence or not,".

9. After Article 50 insert–

"**Effect of endorsement of driving records**

50A.—(1) An order that any particulars or penalty points are to be endorsed on a person's driving record shall operate as an order that his driving record is to be so endorsed until the end of the period for which the endorsement remains effective.

(2) At the end of the period for which the endorsement remains effective the Department must remove the endorsement from the person's driving record.

(3) On the issue of a new licence to a person, any particulars ordered to be endorsed on his driving record shall be entered on the counterpart of the licence unless he has become entitled under paragraph (4) to have a licence issued to him with its counterpart free from those particulars or penalty points.

(4) A person the counterpart of whose licence has been endorsed under paragraph (3) is entitled to have issued to him with effect from the end of the period for which the endorsement remains effective a new licence with a counterpart free from the endorsement if he applies for a new licence in pursuance of Article 13(1) of the Order of 1981, surrenders any subsisting licence and its counterpart, pays the fee prescribed by regulations under Part II of that Order and satisfies the other requirements of Article 13(1) of that Order.

(5) The period for which an endorsement remains effective is determined in accordance with Article 50(4) to (6).".

10. In Article 51 (combination of disqualification and endorsement with certain other orders)–

(a) in paragraph (1), for "or 49" substitute ",49 or 49A";

(b) in paragraph (2)(b), insert at the end "or on his driving record".

11. In Article 52 (supplementary provisions as to disqualification and endorsements)–

(a) in paragraph (3), after "licence" insert "or driving record";

(b) after that paragraph insert–

"(3A) On receiving such a notice in relation to a person who is not the holder of a licence, the Department must make any necessary adjustments to the endorsements on the person's driving record to reflect the outcome of the appeal.".

12. In Article 53(1)(b) and (2)(b) (exemption from disqualification and endorsement for certain construction and use offences) after "him" insert "or on his driving record".

13. In Article 60 (notices on-the-spot etc.)–

(a) in paragraph (2), for "paragraph (3)" substitute "the following provisions of this Article";

(b) in paragraph (3), after "endorsement" insert ", and the person is the holder of a licence";

(c) in paragraph (4)–

(i) for the word "and" at the end of sub-paragraph (a) substitute–

"(aa) the person concerned is the holder of a licence, and",

(ii) in sub-paragraph (b), for "the person concerned" substitute "he";

(d) in paragraph (6), after "paragraph (4)" insert "or (5C)";

(e) in paragraph (9), for "paragraphs (3)(b) and (5)(a)" substitute "this Article".

14. In Article 63 (endorsement of licenses without hearings)–

(a) in the heading, for "licences" substitute "counterparts";

(b) in paragraph (1), after "a person" insert "who is the holder of a licence".

15. In Article 64 (effect of endorsement without hearing) in the heading, after "endorsement" insert "of counterpart".

16. After Article 64 insert–

"**Effect of endorsement of driving record without hearing**

64A.—(1) Where a person's driving record is endorsed under Article 63A he shall be treated for the purposes of Articles 16(4), 30, 31 and 50A of this Order and of the Rehabilitation of Offenders (Northern Ireland) Order 1978 as if–

(a) he had been convicted of the offence,

(b) the endorsement had been made in pursuance of an order made on his conviction by a court under Article 49, and

(c) the particulars of the offence endorsed by virtue of Article 63A(6)(a) were particulars of his conviction of that offence.

(2) In relation to any endorsement of a person's driving record under Article 63A, the references in Article 16(4) to any order made on a person's conviction are to be read as references to the endorsement itself.".

17. In Article 66 (fixed penalty notice mistakenly given: exclusion of fixed penalty procedures) in the heading, after "given" insert "to licence holder".

18. After Article 66 insert–

"**Fixed penalty notice mistakenly given to unlicensed person: exclusion of fixed penalty procedures**

66A.—(1) This Article applies where, on accessing information held on the driving record of a person to whom a fixed penalty notice was given under Article 60, but who is not the holder of a licence, it appears to the fixed penalty clerk or the Department that the person would be liable to be disqualified under Article 40 if he were convicted of the offence in respect of which the fixed penalty notice was given.

(2) The person's driving record must not be endorsed under Article 63A.

(3) In a case where the fixed penalty is required to be paid to the fixed penalty clerk he must not send notice to the Department under Article 63A but instead must notify the Chief Constable that the person to whom the fixed penalty notice was given would be liable to be disqualified under Article 40 if he were convicted of the offence in respect of which the fixed penalty notice was given.

(4) Nothing in this Part prevents proceedings being brought in respect of the offence in respect of which the fixed penalty notice was given where those proceedings are commenced before the end of the period of 6 months beginning with the date on which that notice was given.

(5) Where proceedings in respect of that offence are commenced before the end of that period, the case is from then on to be treated in all respects as if no fixed penalty notice had been given in respect of the offence.

(6) Accordingly, where proceedings in respect of that offence are so commenced, any action taken in pursuance of this Part by reference to that fixed penalty notice shall be void (including, but without prejudice to the generality of the preceding provision–

(a) the registration under Article 76 of any sum, determined by reference to the fixed penalty for that offence, for enforcement against the person to whom the fixed penalty notice was given, and

(b) any proceedings for enforcing payment of any such sum within the meaning of Articles 78 and 79 (defined in Article 79(5))).

(7) In determining for the purposes of paragraph (1) whether a person convicted of an offence would be liable to disqualification under Article 40, it shall be assumed, in the case of an offence in relation to which a range of numbers is shown in the last column of Part I or Part II of Schedule 1, that the number of penalty points to be attributed to the offence would be the lowest in the range.".

19. In Article 74(5) (payment of penalty) for "82" substitute "82A".

20. In Article 77 (notices on-the-spot etc.: when registration and endorsement invalid)–

(a) After paragraph (4) insert–

"(4A) Where in any case within paragraph (2)(a) the driving record of the person to whom the relevant fixed penalty notice was given was endorsed under Article 63A in respect of the offence in respect of which the notice was given, the endorsement shall be void.";

(b) in paragraph (5)(a), after "63" insert "or 63A";

(c) after paragraph (6) insert–

"(6A) The clerk of petty sessions must send notice to the Department of any endorsement of a person's driving record that is void by virtue of this Article and the Department must adjust the endorsements on that record accordingly.".

21. In Article 80 (issue of conditional offer)–

(a) in paragraph (2), for "and 82" substitute ",82 and 82A";

(b) in paragraph (3), for "and 82" substitute ", 82 and 82A";

(c) in paragraph (5), after "conditional offer" insert "sent to an alleged offender who is the holder of a licence";

(d) after that paragraph insert–

"(5A) A conditional offer sent to an alleged offender who is not the holder of a licence must indicate that if the following conditions are fulfilled, that is–

(a) within the period of 28 days following the date on which the offer was issued, or such longer period as may be specified in the offer, the alleged offender makes payment of the fixed penalty to the appropriate person, and

(b) the appropriate person is satisfied, on accessing information held on the driving record of the alleged offender, that if he were convicted of the offence, he would not be liable to be disqualified under Article 40,

any liability to conviction of the offence shall be discharged.";

(e) in paragraph (6)–

(i) for "condition" substitute "conditions"; and

(ii) after "(5)(b)" insert "and (5A)(b)";

(f) in paragraph (7), for "and 82" substitute ", 82 and 82A".

22. In Article 81 (effect of offer and payment of penalty)–

(a) in paragraph (3)–

(i) in sub-paragraph (a), after "counterpart" insert "or (where the alleged offender is not the holder of a licence) accessing information held on his driving record", and

(ii) in sub-paragraph (b), after "with" insert "(where he is the holder of a licence)";

(b) in paragraph (4), after "80(5)(a)" insert "or (5A)(a)".

23. In Article 82 (endorsement where penalty paid)–

(a) in the heading, after "endorsement" insert "of counterparts";

(b) in paragraph (1)(a), after "a person" insert "who is the holder of a licence".

24. After Article 82 insert–

"**Endorsement of driving records where penalty paid**

82A.—(1) Where–

(a) in pursuance of a conditional offer issued under Article 80(1) a person who is not the holder of a licence (referred to in this Article as the "alleged offender") makes payment of the fixed penalty to the fixed penalty clerk, and

(b) proceedings against the alleged offender for the offence to which the conditional offer relates are excluded by Article 81,

the fixed penalty clerk must forthwith send to the Department notice of the relevant particulars to be endorsed on the alleged offender's driving record.

(2) The Department must endorse the relevant particulars on a person's driving record–

(a) on receiving notice under paragraph (1), or

(b) if, in pursuance of a conditional offer issued under Article 80(1A), a person who is not the holder of a licence (also referred to in this Article as the "alleged offender") makes payment of the fixed penalty to it and proceedings against the alleged offender are excluded by Article 81.

(3) Subject to paragraph (4), where a cheque tendered in payment is subsequently dishonoured–

(a) any endorsement made by the Department under paragraph (2) remains effective notwithstanding that the alleged offender is still liable to prosecution in respect of the alleged offence to which the endorsement relates, and

(b) unless the appropriate person is the Department, the appropriate person must upon expiry of the period specified in the conditional offer or, if the period has expired, forthwith notify the person required to be notified that no payment has been made.

(4) When proceedings are brought against an alleged offender where paragraph (3) applies, the court–

(a) must order the removal of the fixed penalty endorsement from the driving record of the alleged offender,

(b) may, on finding the alleged offender guilty, make any competent order of endorsement or disqualification and pass any competent sentence, and

(c) must send to the Department notice of any order made under sub-paragraph (a) or (b).

(5) On receiving a notice under paragraph (4)(c), the Department must make any necessary adjustments to the endorsements on the alleged offender's driving record.

(6) The references in paragraphs (1) and (2) to the relevant particulars are to–

(a) particulars of the offence, including the date when it was committed, and

(b) the number of penalty points to be attributed to the offence.

(7) Where a person's driving record is endorsed under this Article, he shall be treated for the purposes of Articles 16(4), 30, 31 and 50A of this Order and of the Rehabilitation of Offenders (Northern Ireland) Order 1978 as if–

(a) he had been convicted of the offence,

(b) the endorsement had been made in pursuance of an order made on his conviction by a court under Article 49 of this Order, and

(c) the particulars of the offence endorsed by virtue of paragraph (6)(a) were particulars of his conviction of that offence.

(8) In relation to any endorsement of a person's driving record under this Article, the references in Article 16(4) to any order made on a person's conviction are to be read as references to the endorsement itself.".

25. In Article 87 (powers of court in cases of deception)–

(a) after paragraph (1) insert–

"(1A) This Article also applies where–

(a) particulars are endorsed on a person's driving record under Article 63A because the fixed penalty clerk or the Department is deceived as to whether endorsement under that Article is excluded by Article 66A(2) by virtue of the fact that the person to whom the fixed penalty notice was given would be liable to be disqualified under Article 40 if he were convicted of the offence, or

(b) particulars are endorsed on a person's driving record under Article 82A because the appropriate person or court is deceived as to whether proceedings against the person are excluded by Article 81 by virtue of the fact that the person to whom the conditional offer is issued would be liable to be disqualified under Article 40 if he were convicted of the offence.".

(b) in paragraph (2)–

(i) in sub-paragraph (a), for "licence holder" substitute "person to whom the fixed penalty notice was given or conditional offer was issued";

(ii) in sub-paragraph (b), for "licence holder" substitute "he";

(iii) after "63" insert "or 63A"; and

(iv) after "82" insert "or 82A".

26. In Article 88(1)(a) (regulations) after "60(4)" insert " or (5C)".

27. After Article 88 insert–

"**Notices to Department**

88A. Any notice sent to the Department under this Part must be sent in such manner and to such address and contain such particulars as the Department may determine.".

28. In Article 92ZA(1) (application to Great Britain licence holders)–

(a) in sub-paragraph (h), after "49(1)" insert "and (2A)";

(b) in sub-paragraph (j), for "and (3)" substitute ", (3) and (3A)".

29. In Article 92A(1) (application to Community licence holders)–

(a) after "49(1)" insert "and (3A)"; and

(b) after "52(3)" insert "and (3A)".