

# **CORONERS AND JUSTICE ACT 2009**

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## **EXPLANATORY NOTES**

### **THE ACT**

#### *Commentary on Sections*

#### **Part 4 - Sentencing**

#### *Chapter 2: Other provisions relating to sentencing*

#### *Section 137 and Schedule 16: Extension of driving disqualification*

601. *Section 137* introduces Schedule 16. *Paragraph 2(2)* of Schedule 16 inserts a new section, section 35A, into the Road Traffic Offenders Act 1988. Section 35A provides for an extension in the length of the period of a driving disqualification imposed under sections 34 and 35 of that Act where a custodial sentence is also imposed for the same offence. The court must determine the appropriate discretionary period of disqualification and then add on the appropriate extension period. This section applies where the offender is convicted in England and Wales.
602. New section 35A(4) defines the appropriate extension period, which takes account of that part of the sentence which the offender will serve in prison. Where a life sentence or an indeterminate sentence for public protection sentence is imposed the extension period is the period of the minimum tariff set by the court. Where an extended sentence is imposed the extension period is half the custodial term, that is, the period of the sentence to be served in prison. Where a detention and training order is imposed, the extension period is half the term of the order. Once the provisions in section 181 of the 2003 Act are commenced, if custody plus is imposed the extension period is the custodial period specified by the court and if intermittent custody is imposed the extension period is equal to the number of custodial days specified by the court. In all other cases, the extension period is equal to one half of the custodial sentence (at which point the offender is subject to automatic release or, for sentences of 12 months or more, released on licence in the community until the end of sentence).
603. New section 35A(6) ensures that the appropriate extension period is reduced to reflect any reduction in the custodial sentence as a result of the court taking into account time already served on remand, or periods of remand on bail in a case where the offender was subject to a curfew condition which was electronically monitored.
604. Under new section 35A(7) the extension of disqualification does not apply where the court imposes a suspended sentence or where a life sentence to which no early release provisions apply (cases where the offender must spend the rest of his or her life in prison).
605. New sections 35A(8) and (9) provide for an order-making power to amend the extension period where an amending order is made under section 267 of the 2003 Act to change the proportion of time to be served in custody in relation to a standard determinate sentence, or the appropriate custodial term of an extended sentence.

606. New section 35B deals with offenders who are disqualified at the same time as they are imprisoned for another offence or at a time when they are already in prison for another offence. In respect of these offenders, the court is required to have regard to the diminished effect of disqualification as a distinct punishment where the person who is disqualified is also imprisoned. It is to have regard to that consideration if, and to the extent that, it is appropriate to do so. For example, the more that the beginning of a driving disqualification overlaps with the end of the period of detention under an earlier sentence, the more a court might extend the disqualification to compensate for the diminished effect during the overlap.
607. *Paragraph 2(3)* of Schedule 16 inserts a new section 35C and section 35D into the Road Traffic Offenders Act 1988, which makes provision equivalent to that made by paragraph 2(2) for cases where the person is convicted in Scotland.
608. *Paragraph 3* inserts a new sections 248D and 248E into the Criminal Procedure (Scotland) Act 1995 to the same effect as paragraph 2(3) but this time in relation to a person disqualified under section 248 (driving disqualification where vehicle used to commit an offence) or section 248A (general power to disqualify offenders) of that Act. Section 248D applies where the driving disqualification and the sentence of imprisonment are both imposed for the same offence. Section 248E applies where there is an overlap between the period of disqualification and of imprisonment but the overlapping punishments are not imposed for the same offence.
609. *Paragraphs 1, 4 and 6* of Schedule 16 insert new provisions in the Criminal Justice (Northern Ireland) Order 1980, the Road Traffic Offenders (Northern Ireland) Order 1996 and the Criminal Justice (Northern Ireland) Order 2008 to the same effect as paragraph 2(2) where the person is convicted in Northern Ireland.
610. *Paragraph 5* of Schedule 16 inserts new sections 147A and 147B into the Powers of Criminal Courts (Sentencing) Act 2000 (the 2000 Act). These sections make similar provision to the new sections inserted by paragraph 2(2), but this time for an extension of the period of the driving disqualification imposed by courts in England and Wales under section 146 (driving disqualification for any offence) or 147 (driving disqualification where vehicle used for the purposes of crime) of that Act. Section 147A applies where a custodial sentence is also imposed for the offence. Section 147B applies where there is an overlap between the period of disqualification and the period of imprisonment but the overlapping punishments are not imposed for the same offence.

***Section 138: Dangerous offenders: terrorism offences (England and Wales)***

611. Schedule 15 to the 2003 Act lists specified violent or sexual offences which may attract a sentence of imprisonment for public protection under section 225 of the 2003 Act or an extended sentence under section 227 of the 2003 Act. Section 138 amends Part 1 to Schedule 15 of the 2003 Act (specified violent offences) by inserting certain terrorist offences. All the offences inserted carry a maximum penalty of ten years or more. The changes take effect as provided in section 182 (commencement two months after Act is passed) and paragraph 29 to 36 of Schedule 22 (transitional, transitory and saving provisions).

***Section 139: Dangerous offenders: terrorism offences (Northern Ireland)***

612. This section makes amendments to Schedules 1 and 2 to the Criminal Justice (Northern Ireland) Order 2008 to similar effect.

***Section 140: Appeals against certain confiscation orders (England and Wales)***

613. *Section 140* inserts new subsections into section 11 of the Criminal Appeal Act 1968 (“the 1968 Act”) and a new section 11A in relation to defence appeals against the making of confiscation orders. If the Court of Appeal allows an appeal and quashes a confiscation order, the new subsections enable the Court to direct the Crown Court

to consider whether a new order should be made, and if so what the order should be, instead of the Court of Appeal having to consider the matter itself.

614. The effect of section 140 is to give the Court of Appeal the power to remit cases to the Crown Court where a confiscation order made under certain enactments is quashed as a result of a successful appeal by the defence; the relevant enactments are listed in new subsection (3D) inserted into section 11 of the 1968 Act. The Crown Court must comply with any directions given by the Court of Appeal (subsection (3B)) and must ensure that any new order is not more severe than the one that it replaces (subsection (3C)). Section 140 also inserts new section 11A into the 1968 Act, which enables the Crown Court to set sums already confiscated (and paid over) under the terms of the original order against any sums required to be paid under any replacement order.

***Section 141: Appeals against certain confiscation orders (Northern Ireland)***

615. **Section 141** inserts new subsections into section 10 of the Criminal Appeal (Northern Ireland) Act 1980 and a new section 10A to the Act.
616. The effect of section 141 on section 10 of the Criminal Appeal (Northern Ireland) Act 1980 is similar to the effect of section 140 on section 11 of the 1968 Act. However, there is no provision stating that the Northern Ireland Court of Appeal must ensure that any new order is not more severe than the one that it replaces. This is because the existing Northern Ireland provision in section 10(3) allows the Court of Appeal to pass more or less severe sentences on appeal.