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STATUTORY INSTRUMENTS

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**1996 No. 1320**

**The Road Traffic Offenders (Northern Ireland) Order 1996**

**PART III**

**SENTENCE**

*Disqualification*

**Disqualification for certain offences**

**35.**—(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 12 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, and either—

- (a) the penalty points to be taken into account on that occasion number fewer than 12, or
- (b) the offence is not one involving obligatory endorsement,

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 Order of 1995, that is—

- (a) Article 14 (causing death, or grievous bodily injury, by careless driving when under the influence of drink or drugs),
- (b) Article 15(1) (driving or attempting to drive while unfit),
- (c) Article 16(1)(a) (driving or attempting to drive with excess alcohol),
- (d) Article 18(7) (failing to provide a specimen), where that is an offence involving obligatory disqualification,

has within the 10 years immediately preceding the commission of the offence been convicted of any such offence, paragraph (1) shall apply in relation to him as if the reference to 12 months were a reference to 3 years.

This paragraph is subject to Article 96.

(4) Subject to paragraph (3), paragraph (1) shall apply as if the reference to 12 months were a reference to 2 years, in relation to—

- (a) a person convicted of—
  - (i) manslaughter, or
  - (ii) an offence under Article 9 of the Order of 1995 (causing death, or grievous bodily injury, by dangerous driving), or
  - (iii) an offence under Article 14 of that Order (causing death, or grievous bodily injury, by careless driving when under the influence of drink or drugs), and

(b) a person on whom more than one disqualification for a fixed period of 56 days or more has been imposed within the 3 years immediately preceding the commission of the offence.

(5) For the purposes of paragraph (4)(b) there shall be disregarded any disqualification imposed under Article 28 of this Order or Article 8 of the Criminal Justice (Northern Ireland) Order 1980 (offences committed using a motor vehicle) and any disqualification imposed in respect of an offence of stealing a motor vehicle, an offence under section 12 or 24 of the Theft Act (Northern Ireland) 1969, an offence under Article 172 of the Order of 1981, or an attempt to commit such an offence.

(6) The preceding provisions of this Article 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.

(7) This Article is subject to Article 53.

### **Reduced disqualification period for attendance on courses**

**36.—**(1) This Article applies where—

(a) a person is convicted of an offence under any of the following provisions of the Order of 1995, namely Article 14 (causing death, or grievous bodily injury, by careless driving when under influence of drink or drugs), Article 15 (driving or being in charge when under influence of drink or drugs), Article 16 (driving or being in charge with excess alcohol) or Article 18 (failing to provide a specimen), and

(b) the court makes an order under Article 35 of this Order disqualifying him for a period of not less than 12 months.

(2) Where this Article applies, the court may make an order that the period of disqualification imposed under Article 35 shall be reduced if, by a date specified in the order under this Article, the offender satisfactorily completes a course approved by the Department for the purposes of this Article and specified in the order.

(3) The reduction made by an order under this Article in a period of disqualification imposed under Article 35 shall be a period specified in the order of not less than 3 months and not more than one quarter of the unreduced period (and accordingly where the period imposed under Article 35 is 12 months, the reduced period shall be 9 months).

(4) The court shall not make an order under this Article unless—

(a) it is satisfied that a place on the course specified in the order will be available for the offender,

(b) the offender appears to the court to be of or over the age of 17,

(c) the court has explained the effect of the order to the offender in ordinary language, and has informed him of the amount of the fees for the course and of the requirement that he must pay them before beginning the course, and

(d) the offender has agreed that the order should be made.

(5) The date specified in an order under this Article as the latest date for completion of a course must be at least 2 months before the last day of the period of disqualification as reduced by the order.

(6) An order under this Article shall name the petty sessions district in which the offender resides or will reside.

### **Certificates of completion of courses**

**37.**—(1) An offender shall be regarded for the purposes of Article 36 as having completed a course satisfactorily if (and only if) a certificate that he has done so is received by the clerk of the supervising court before the end of the period of disqualification imposed under Article 35.

(2) If the certificate referred to in paragraph (1) is received by the clerk of the supervising court before the end of the period of disqualification imposed under Article 35 but after the end of the period as it would have been reduced by the order, the order shall have effect as if the reduced period ended with the day on which the certificate is received by the clerk.

(3) The certificate referred to in paragraph (1) shall be a certificate in such form, containing such particulars, and given by such person, as may be prescribed by, or determined in accordance with, regulations made by the Department.

(4) A course organiser shall give the certificate mentioned in paragraph (1) to the offender not later than 14 days after the date specified in the order as the latest date for completion of the course, unless the offender fails to make due payment of the fees for the course, fails to attend the course in accordance with the organiser's reasonable instructions, or fails to comply with any other reasonable requirements of the organiser.

(5) Where a course organiser decides not to give the certificate mentioned in paragraph (1) he shall give written notice of his decision to the offender, as soon as possible, and in any event not later than 14 days after the date specified in the order as the latest date for completion of the course.

(6) An offender to whom a notice is given under paragraph (5) may, within such period as may be prescribed by magistrates' courts rules, apply to the supervising court for a declaration that the course organiser's decision not to give a certificate was contrary to paragraph (4); and if the court grants the application Article 36 shall have effect as if the certificate had been duly received by the clerk of the court.

(7) If 14 days after the date specified in the order as the latest date for completion of the course the course organiser has given neither the certificate mentioned in paragraph (1) nor a notice under paragraph (5), the offender may, within such period as may be prescribed by magistrates' courts rules, apply to the supervising court for a declaration that the course organiser is in default; and if the court grants the application Article 36 shall have effect as if the certificate had been duly received by the clerk of the court.

(8) A notice under paragraph (5) shall specify the ground on which it is given, and the Department may by regulations make provision as to the form of notices under that paragraph and as to the circumstances in which they are to be treated as given.

(9) Where the clerk of a court receives a certificate of the kind referred to in paragraph (1), or a court grants an application under paragraph (6) or (7), the clerk or court must send notice of that fact to the Department; and the notice must be sent in such manner and to such address, and must contain such particulars, as the Department may determine.

### **Provisions supplementary to Articles 36 and 37**

**38.**—(1) The Department may issue guidance to course organisers, or to any category of course organiser as to the conduct of courses approved for the purposes of Article 36; and—

- (a) course organisers shall have regard to any guidance given to them under this paragraph, and
- (b) in determining for the purposes of Article 37(6) whether any instructions or requirements of an organiser were reasonable, a court shall have regard to any guidance given to him under this paragraph.

(2) In Articles 36 and 37 and this Article—

“course organiser”, in relation to a course, means the person who, in accordance with regulations made by the Department, is responsible for giving the certificates mentioned in Article 37(1) in respect of the completion of the course;

“supervising court”, in relation to an order under Article 36, means a court of summary jurisdiction acting for the petty sessions district named in the order as the district where the offender resides or will reside; and any reference to the clerk of such a court is a reference to the clerk of petty sessions for the petty sessions district for which the court acts.

(3) Regulations under Article 37 or this Article—

- (a) may include such incidental or supplementary provision as appears to the Department to be necessary or expedient; and
- (b) shall be subject to negative resolution.

### **Experimental period for Article 36**

**39.**—(1) Subject to the following provisions, no order shall be made under Article 36 after the end of 2000 or such later time as may be specified in an order made by the Department.

(2) At any time before the restriction imposed by paragraph (1) has taken effect, the Department may by order provide that it shall not do so.

(3) In this Article “the experimental period” means the period beginning when Articles 36 to 38 come into operation and ending—

- (a) when the restriction imposed by paragraph (1) takes effect, or
- (b) if the Department makes an order under paragraph (2), on a date specified in the order (being a date falling before the time when the restriction imposed by paragraph (1) would otherwise have taken effect).

(4) During the experimental period—

- (a) no order shall be made under Article 36 by virtue of a person’s conviction under Article 14 of the Order of 1995, and
- (b) no order shall be made under Article 36 except by a court of summary jurisdiction acting for a petty sessions district which is for the time being designated for the purposes of this Article.

(5) In relation to orders made under Article 36 during the experimental period, that Article shall have effect with the omission of paragraph (6) and Article 37 shall have effect as if references to the supervising court were references to the court which made the order.

(6) The power to designate a district for the purposes of this Article shall be exercisable by the Lord Chancellor by order, and includes power to revoke any designation previously made.

(7) An order under paragraph (6)—

- (a) shall specify the period for which a district is designated, and
- (b) may extend or abridge any period previously specified.

(8) The power to make an order under paragraph (1) shall not be exercisable after the end of 2000, and no more than one order may be made under that paragraph.

(9) Any order made by the Department under this Article shall be subject to affirmative resolution.

(10) Any order made by the Lord Chancellor under paragraph (6) shall be subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946 shall apply accordingly.

## **Disqualification for repeated offences**

### **40.—(1) Where—**

- (a) a person is convicted of an offence to which this paragraph applies, and
- (b) the penalty points to be taken into account on that occasion number 12 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) Paragraph (1) applies to—**

- (a) an offence involving discretionary disqualification and obligatory endorsement, and
- (b) an offence involving obligatory disqualification in respect of which no order is made under Article 35.

### **(3) The minimum period referred to in paragraph (1) is—**

- (a) 6 months if no previous disqualification imposed on the offender is to be taken into account, and
- (b) one year if one, and 2 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 for a fixed period of 56 days or more and was imposed within the 3 years immediately preceding the commission of the latest offence in respect of which penalty points are taken into account under Article 31.

(4) Where an offender is convicted on the same occasion of more than one offence to which paragraph (1) applies—

- (a) not more than one disqualification shall be imposed on him under paragraph (1),
- (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 paragraph (1) shall be treated as an order made on the conviction of each of the offences.

### **(5) No account is to be taken under paragraph (1) 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 3 years immediately preceding the conviction, have been taken into account under that paragraph in ordering the offender to be disqualified for a shorter period or not ordering him to be disqualified.

(6) References in this Article to a disqualification do not include a disqualification imposed under Article 28 of this Order or Article 8 of the Criminal Justice (Northern Ireland) Order 1980 (disqualification where vehicle used for commission of offence) or a disqualification imposed in respect of an offence of stealing a motor vehicle, an offence under section 12 or 24 of the Theft Act (Northern Ireland) 1969, an offence under Article 172 of the Order of 1981, or an attempt to commit such an offence.

(7) The preceding provisions of this Article shall apply in relation to a conviction of an offence committed by aiding, abetting, counselling, procuring, or inciting to the commission of, an offence involving obligatory disqualification as if the offence were an offence involving discretionary disqualification.

(8) This Article is subject to Article 53.

### **Disqualification until test is passed**

**41.—**(1) Where this paragraph applies to a person the court must order him to be disqualified until he passes the appropriate driving test.

(2) Paragraph (1) applies to a person who is disqualified under Article 35 on conviction of—

- (a) manslaughter by the driver of a motor vehicle, or
- (b) an offence under Article 9 of the Order of 1995 (causing death, or grievous bodily injury, by dangerous driving) or Article 10 of that Order (dangerous driving).

(3) Paragraph (1) also applies—

- (a) to a person who is disqualified under Article 35 or 40 in such circumstances or for such period as the Department may by order prescribe, or
- (b) to such other persons convicted of such offences involving obligatory endorsement as may be so prescribed.

(4) Where a person to whom paragraph (1) does not apply is convicted of an offence involving obligatory endorsement, the court may order him to be disqualified until he passes the appropriate driving test (whether or not he has previously passed any test).

(5) In this Article—

“appropriate driving test” means—

- (a) an extended driving test, where a person—
    - (i) is convicted of such an offence as the Department may by order prescribe, or
    - (ii) is disqualified under Article 40,
  - (b) a test of competence to drive, other than an extended driving test, in any other case,
- “extended driving test” means a test of competence to drive prescribed by the Department by order for the purposes of this Article, and

“test of competence to drive” means a test prescribed by virtue of Article 5(3) of the Order of 1981.

(6) In determining whether to make an order under paragraph (4), the court shall have regard to the safety of road users.

(7) Where a person is disqualified until he passes the extended driving test—

- (a) any earlier order under this Article shall cease to have effect, and
- (b) a court shall not make a further order under this Article while he is so disqualified.

(8) Subject to paragraph (9), a disqualification by virtue of an order under this Article shall be deemed to have expired on production to the Department of evidence, in such form as may be prescribed by regulations under Article 5(3) of the Order of 1981, that the person disqualified has passed the test in question since the order was made.

(9) A disqualification shall be deemed to have expired only in relation to vehicles of such classes as may be prescribed in relation to the test passed by regulations under that Article.

(10) Where there is issued to a person a licence on the counterpart of which are endorsed particulars of a disqualification under this Article, there shall also be endorsed the particulars of any test of competence to drive that he has passed since the order of disqualification was made.

(11) For the purposes of an order under this Article, a person shall be treated as having passed a test of competence to drive other than an extended driving test if he passes a corresponding test conducted—

- (a) under the law of Great Britain, the Isle of Man, any of the Channel Islands, another member State, Gibraltar or a designated country or territory (as defined by Article 5(12) of the Order of 1981), or
- (b) for the purposes of obtaining a British Forces licence (as defined by Article 4(10) of that Order),

and accordingly paragraphs (8) to (10) shall apply in relation to such a test as they apply in relation to a test prescribed by virtue of Article 5(3) of that Order.

(12) This Article is subject to Article 53.

(13) An order under paragraph (3) or an order under paragraph (5) prescribing an offence for the purposes of paragraph (a)(i) of the definition of “appropriate driving test” shall be subject to affirmative resolution.

(14) The Department shall not make an order under paragraph (3) after the end of 2004 if it has not previously made such an order.

### **Effect of order of disqualification**

**42.**—(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—

- (a) the disqualification is for a fixed period shorter than 56 days in respect of an offence involving obligatory endorsement, or
- (b) the order is made under Article 28,

paragraph (1) shall not prevent the licence from again having effect at the end of the period of disqualification.

(3) Where the holder of the licence appeals against the order and the disqualification is suspended under Article 44, the period of disqualification shall be treated for the purpose of paragraph (1) as beginning on the day on which the disqualification ceases to be suspended.

(4) Notwithstanding anything in Part II of the Order of 1981, a person disqualified by an order of a court under Article 41 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.

### **Appeal against disqualification**

**43.** A person disqualified by an order of a court under Article 28, 35, 40 or 41(4) may appeal against the order in the same manner as against a conviction.

### **Suspension of disqualification pending appeal**

**44.**—(1) Any court (whether a court of summary jurisdiction or another) which makes an order disqualifying a person may, if it thinks fit, suspend the disqualification pending an appeal against the order.

(2) Where a court exercises its power under paragraph (1), it must send notice of the suspension to the Department.

(3) The notice must be sent in such manner and to such address and must contain such particulars as the Department may determine.

**Power of appellate courts to suspend disqualification**

**45.**—(1) This Article applies where a person has been convicted by or before a court of an offence involving obligatory or discretionary disqualification and has been ordered to be disqualified; and in the following provisions of this Article—

- (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 county court, or
- (b) appeals or applies for leave to appeal to the Court of Appeal,

against his conviction or his sentence, the county 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 under section 41 of the Judicature (Northern Ireland) Act 1978 from any decision of the High Court or the Court of Appeal which is material to his conviction or sentence, the High 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 Article 146 of the Magistrates' Courts (Northern Ireland) Order 1981 (statement of case by magistrates' court) or under Article 61 of the County Courts (Northern Ireland) Order 1980 (statement of case by county court) the Court of Appeal 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 county court or a court of summary jurisdiction, being 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 Article 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 Article, a court suspends the disqualification of any person, it must send notice of the suspension to the Department.

(8) The notice must be sent in such manner and to such address and must contain such particulars as the Department may determine.

**Suspension of disqualification pending determination of applications under Article 37**

**46.**—(1) Where a person makes an application to a court under Article 37, the court may suspend the disqualification to which the application relates pending the determination of the application.

(2) Where a court exercises its power under paragraph (1) it must send notice of the suspension to the Department.

(3) The notice must be sent in such manner and to such address, and must contain such particulars, as the Department may determine.



### **Removal of disqualification**

47.—(1) Subject to the provisions of this Article, 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 paragraph (1) 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) 2 years, if the disqualification is for less than 4 years,
- (b) one half of the period of disqualification, if it is for less than 10 years but not less than 4 years,
- (c) 5 years in any other case;

and in determining the expiration of the period after which under this paragraph 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 paragraph (1) is refused, a further application under that paragraph shall not be entertained if made within 3 months after the date of the refusal.

(5) An application under paragraph (1) shall not be heard except after notice, setting forth the grounds of the application, has been given to the superintendent or chief superintendent of the Royal Ulster Constabulary acting for the division for which the convicting court acts.

(6) If under this Article a court orders a disqualification to be removed, the court—

- (a) must cause particulars of the order to be endorsed on the counterpart of 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.

(7) Paragraph (6)(a) shall apply only where the disqualification was imposed in respect of an offence involving obligatory endorsement; and in any other case the court must send notice of the order made under this Article to the Department.

(8) A notice under paragraph (7) must be sent in such manner and to such address, and must contain such particulars, as the Department may determine.

(9) The preceding provisions of this Article shall not apply where the disqualification was imposed by order under Article 41(1).

### **Rule for determining end of period of disqualification**

48. 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.