



# Road Traffic Offenders Act 1988

## 1988 CHAPTER 53

### PART II

#### SENTENCE

##### *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 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,

---

*Status: This is the original version (as it was originally enacted).*

---

(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.