



**Law  
Commission**  
Reforming the law

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**Sentencing law in England and Wales**  
**Legislation currently in force**  
Part 3.7 – Driving disqualification/endorsement

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9 October 2015

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## 3.7 Driving disqualification/endorsement

### 3.7.1. General principles

#### Information after conviction

#### ***RTOA 1988 s.25<sup>1503</sup>: Information as to date of birth and sex***

- s.25(1) - if on convicting a person of an offence involving obligatory or discretionary disqualification or of such other offence as may be prescribed by regulations under section 105 of the Road Traffic Act 1988 the court does not know his date of birth, the court must order him to give that date to the court in writing.
- s.25(2) - if a court convicting a person of such an offence in a case where—
  - (a) notification has been given to the designated officer for a magistrates' court in pursuance of section 12(4) of the Magistrates' Courts Act 1980 (written pleas of guilty), or written intimation of a plea of guilty has been given in pursuance of section 334(3) of the Criminal Procedure (Scotland) Act 1975, and
  - (b) the notification or intimation did not include a statement of the person's sex, does not know the person's sex, the court must order the person to give that information to the court in writing.
- s.25(3) - a person who knowingly fails to comply with an order under subsection (1) or (2) above is guilty of an offence.
- s.25(4) - nothing in section 7 of the Powers of Criminal Courts (Sentencing) Act 2000 (where magistrates' court commits a person to the Crown Court to be dealt with, certain powers and duties transferred to that court) applies to any duty imposed upon a magistrates' court by subsection (1) or (2) above.
- s.25(5) - where a person has given his date of birth in accordance with this section or section 8 of this Act, the Secretary of State may serve on that person a notice in writing requiring him to provide the Secretary of State:
  - (a) with such evidence in that person's possession or obtainable by him as the Secretary of State may specify for the purpose of verifying that date, and
  - (b) if his name differs from his name at the time of his birth, with a statement in writing specifying his name at that time.
- s.25(6) - a person who knowingly fails to comply with a notice under subsection (5) above is guilty of an offence.
- s.25(7) - a notice to be served on any person under subsection (5) above may be served on him by delivering it to him or by leaving it at his proper address or by sending it to him by post; and for the purposes of this subsection and section 7 of the Interpretation Act 1978 in its application to this subsection the proper address of any person shall be his latest address as known to the person serving the notice.

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<sup>1503</sup> Commencement: 15 May 1989, RTOA 1988 s.99(2).

## Production of licence

### ***RTOA 1988 s.27<sup>1504</sup>: Production of licence***

- s.27(1) - where a person who is the holder of a licence is convicted of an offence involving obligatory or discretionary disqualification, and a court proposes to make an order disqualifying him or an order under section 44 of this Act, the court must, unless it has already received them, require the licence and its counterpart to be produced to it.
- s.27(3) - if the holder of the licence has not caused it and its counterpart to be delivered, or posted it and its counterpart, in accordance with section 7 of this Act and does not produce it and its counterpart as required under this section or section 40 of the Crime (Sentences) Act 1997, section 146 or 147 of the Powers of Criminal Courts (Sentencing) Act 2000 or section 223A or 436A of the Criminal Procedure (Scotland) Act 1975, or if the holder of the licence does not produce it and its counterpart as required by section 40B of the Child Support Act 1991, then, unless he satisfied 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 and its counterpart are produced to the court and shall, while suspended, be of no effect.
- s.27(4) - subsection (3) above does not apply where the holder of the licence—
- (a) has caused a current receipt for the licence and its counterpart issued under section 56 of this Act to be delivered to the proper officer 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 proper officer 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 and its counterpart to the court immediately on its return.
- s.27(4A) - subsection (3) does not apply where section 7(1B) applies in relation to the proceedings and the holder of the licence—
- (a) has caused a current receipt for the licence issued under section 56 to be delivered to the designated officer specified in the single justice procedure notice within the period described in section 7(1B)(a),
  - (b) has posted it to that officer within that period in such manner as is described in section 7(1B)(b), or
  - (c) surrenders such a receipt to the court at the hearing described in section 7(1B)(c),
- and produces the licence to the court immediately on its return.
- s.27(5) - In this section— “proper officer” means—
- (a) in relation to a magistrates’ court in England and Wales, the designated officer for the court, and
  - (b) in relation to any other court, the clerk of the court.

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<sup>1504</sup> Commencement: 15 May 1989, RTOA 1988 s.99(2).

“single justice procedure notice” has the same meaning as in section 29 of the Criminal Justice Act 2003.

### **Court may take into account endorsements**

#### ***RTOA 1988 s.31<sup>1505</sup>: Court may take particulars endorsed into consideration***

- s.31(1) - 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.
- s.31(2) - this section has effect notwithstanding anything in section 166(1) to (6) of the Criminal Procedure (Scotland) Act 1995 (requirements as to notices of previous convictions).

### **Absent defendants**

#### ***MCA 1980 s.11<sup>1506</sup>: Non-appearance of accused: general provisions***

- s.11(4) - in proceedings to which this subsection applies, the court shall not in a person's absence impose any disqualification on him, except on resumption of the hearing after an adjournment under section 10(3) above; and where a trial is adjourned in pursuance of this subsection the notice required by section 10(2) above shall include notice of the reason for the adjournment.

### **Purpose of disqualification**

#### ***R. v Bagshawe [2013] EWCA Crim 127; [2013] 2 Cr. App. R. (S.) 62 (p.393)***

...disqualification has a dual role or function. First, it is part of the penalty, as is clear from the sentencing guidelines, and the level of culpability is relevant to the length of disqualification. Second, it has an important preventative element... Thus when assessing the appropriate length of disqualification, the court looks backwards as well as forwards... (Haddon-Cave J, at [13])

### **Punishment**

#### ***RTOA 1988 s.33<sup>1507</sup>: Fine and imprisonment***

- s.33(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.
- s.33(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.

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<sup>1505</sup> Commencement: 15 May 1989, RTOA 1988 s.99(2).

<sup>1506</sup> Commencement: 6 July 1981, SI 1981/457 art.2.

<sup>1507</sup> Commencement: 15 May 1989, RTOA 1988 s.99(2).

## Interpretation

### **RTOA 1988 s.96<sup>1508</sup>: Meaning of “offence involving obligatory endorsement”**

- s.96 - for the purposes of this Act, an offence involves obligatory endorsement if it is 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 and either—
- (a) the word “obligatory” (without qualification) appears in column 6 (in the case of Part I) or column 3 (in the case of Part II) against the offence, or
  - (b) that word appears there qualified by conditions relating to the offence which are satisfied.

### **RTOA 1988 s.97<sup>1509</sup>: Meaning of “offence involving obligatory disqualification” and “offence involving discretionary disqualification”**

- s.97(1) - for the purposes of this Act, an offence involves obligatory disqualification if it is 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 and either—
- (a) the word “obligatory” (without qualification) appears in column 5 (in the case of Part I) or column 2 (in the case of Part II) against the offence, or
  - (b) that word appears there qualified by conditions or circumstances relating to the offence which are satisfied or obtain.
- s.97(2) - for the purposes of this Act, an offence involves discretionary disqualification if it is 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 and either—
- (a) the word “discretionary” (without qualification) appears in column 5 (in the case of Part I) or column 2 (in the case of Part II) against the offence, or
  - (b) that word appears there qualified by conditions or circumstances relating to the offence which are satisfied or obtain.

### **RTOA 1988 s.97A<sup>1510</sup>: Meaning of “driving record”**

- s.97A(1) - in this Act “driving record”, in relation to a person, means a record in relation to the person maintained by the Secretary of State and designed to be endorsed with particulars relating to offences committed by the person under the Traffic Acts.
- s.97A(2) - the Secretary of State may make arrangements for the following persons to have access, by such means as the Secretary of State may determine, to information held on a person’s driving record—
- (a) courts,
  - (b) constables,
  - (c) fixed penalty clerks,

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<sup>1508</sup> Commencement: 15 May 1989, RTOA 1988 s.99(2).

<sup>1509</sup> Commencement: 15 May 1989, RTOA 1988 s.99(2).

<sup>1510</sup> Commencement: 1 April 2009, as inserted by RSA 2006 s.8, commenced by RSA 2006 s.61(8) and SI 2009/3164 art.4(a).

- (d) the person in respect of whom the record is maintained and persons authorised by him, and
- (e) other persons prescribed in regulations made by the Secretary of State.

s.97A(3) - the power to make regulations under subsection (2)(e) above shall be exercisable by statutory instrument.

s.97A(4) - no regulations shall be made under subsection (2)(e) above unless a draft of the instrument containing them has been laid before, and approved by a resolution of, each House of Parliament.

**RTOA 1988 s.98<sup>1511</sup>: General interpretation**

s.98(1) - in this Act—

*“disqualified”* means disqualified for holding or obtaining a licence and *“disqualification”* is to be construed accordingly,

*“drive”* has the same meaning as in the Road Traffic Act 1988,

*“licence”* means a licence to drive a motor vehicle granted under Part III of that Act

*“provisional licence”* means a licence granted by virtue of section 97(2) of that Act,

*“the provisions connected with the licensing of drivers”* means sections 7, 8, 22, 25 to 29, 31, 32, 34 to 48, 91ZA to 91B, 96 and 97 of this Act,

*“road”*—

- (a) in relation to England and Wales, means any highway and any other road to which the public has access, and includes bridges over which a road passes, and
- (b) in relation to Scotland, [means any road within the meaning of the Roads (Scotland) Act 1984 and any other way to which the public has access, and includes bridges over which a road passes,

*“the Road Traffic Acts”* means the Road Traffic Act 1988, the Road Traffic (Consequential Provisions) Act 1988 (so far as it reproduces the effect of provisions repealed by that Act) and this Act, and

*“the Traffic Acts”* means the Road Traffic Acts and the Road Traffic Regulation Act 1984

and *“Community licence”*, *“counterpart”*, *“EEA State”* and *“Northern Ireland licence”* have the same meanings as in Part III of the Road Traffic Act 1988

s.98(2) - sections 185 and 186 of the Road Traffic Act 1988 (meaning of *“motor vehicle”* and other expressions relating to vehicles) apply for the purposes of this Act as they apply for the purposes of that Act.

s.98(3) - in the Schedules to this Act—

*“RTRA”* is used as an abbreviation for the Road Traffic Regulation Act 1984, and

*“RTA”* is used as an abbreviation for the Road Traffic Act 1988 or, if followed by “1989”, the Road Traffic (Driver Licensing and Information Systems) Act 1989.

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<sup>1511</sup> Commencement: 15 May 1989, RTOA 1988 s.99(2).



s.98(4) - subject to any express exception, references in this Act to any Part of this Act include a reference to any Schedule to this Act so far as relating to that Part.

### 3.7.2. Interim

#### 3.7.2.1. Making the order

##### **Magistrates' Court: Availability and power to order**

###### ***RTOA 1988 s.26<sup>1512</sup>: Interim disqualification***

s.26(1) - where a magistrates' court—

- (a) commits an offender to the Crown Court under section 6 of the Powers of Criminal Courts (Sentencing) Act 2000 or any enactment mentioned in subsection (4) of that section, or
- (b) remits an offender to another magistrates' court under section 10 of that Act, to be dealt with for an offence involving obligatory or discretionary disqualification, it may order him to be disqualified until he has been dealt with in respect of the offence.

##### **Any court: Power to order upon deferral of sentence**

###### ***RTOA 1988 s.26<sup>1513</sup>: Interim disqualification***

s.26(2) - where a court in England and Wales—

- (a) defers passing sentence on an offender under section 1 of that Act in respect of an offence involving obligatory or discretionary disqualification, or
- (b) adjourns after convicting an offender of such an offence but before dealing with him for the offence,

it may order the offender to be disqualified until he has been dealt with in respect of the offence.

##### **Duty of the court when imposing interim disqualification**

###### ***RTOA 1988 s.26<sup>1514</sup>: Interim disqualification***

s.26(7) - where a court makes an order under this section in respect of any person it must—

- (a) require him to produce to the court any licence held by him and its counterpart, and
- (b) retain the licence and counterpart until it deals with him or (as the case may be) cause them to be sent to the proper officer of the court which is to deal with him.

s.26(7A) - in subsection (7) above "*proper officer*" means—

- (a) in relation to a magistrates' court in England and Wales, the designated officer for the court, and
- (b) in relation to any other court, the clerk of the court.

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<sup>1512</sup> Commencement: 15 May 1989, RTOA 1988 s.99(2).

<sup>1513</sup> Commencement: 15 May 1989, RTOA 1988 s.99(2).

<sup>1514</sup> Commencement: 15 May 1989, RTOA 1988 s.99(2).

- s.26(8) - if the holder of the licence has not caused it and its counterpart to be delivered, or has not posted them, in accordance with section 7 of this Act and does not produce the licence and counterpart as required under subsection (7) above, then he is guilty of an offence.
- s.26(9) - subsection (8) above does not apply to a person who—
- (a) satisfies the court that he has applied for a new licence and has not received it, or
  - (b) surrenders to the court a current receipt for his licence and its counterpart issued under section 56 of this Act, and produces the licence and counterpart to the court immediately on their return.

### **Duty of court to send licence etc. to Secretary of State**

#### ***RTOA 1988 s.47<sup>1515</sup>: Supplementary provisions as to disqualifications and endorsements.***

- s.47(2) - where a court orders the endorsement of the counterpart of any licence held by a person it may, and where a court orders the holder of a licence to be disqualified for a period of 56 days or more it must, send the licence and its counterpart, on their being produced to the court, to the Secretary of State; and if the court orders the endorsement but does not send the licence and its counterpart to the Secretary of State it must send him notice of the endorsement.
- s.47(2A) - subsection (2) above is subject to section 2(2) of and paragraph 7(2) of Schedule 1 to the Road Traffic (New Drivers) Act 1995 (obligation of court to send licence and its counterpart to the Secretary of State).
- s.47(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 and the counterpart of a licence so sent in pursuance of this section must be sent to such address as the Secretary of State may determine.

#### **3.7.2.2. Effect of the order**

##### **Automatic expiration of the order**

#### ***RTOA 1988 s.26<sup>1516</sup>: Interim disqualification***

- s.26(4) - subject to subsection (5) below, an order under this section shall cease to have effect at the end of the period of six months beginning with the day on which it is made, if it has not ceased to have effect before that time.

##### **No further order for interim disqualification**

#### ***RTOA 1988 s.26<sup>1517</sup>: Interim disqualification***

- s.26(6) - where a court orders a person to be disqualified under this section (“the first order”), no court shall make a further order under this section in respect of the same offence or

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<sup>1515</sup> Commencement: 1 July 1992, as inserted by RTA 1991 Sch.4 para.97.

<sup>1516</sup> Commencement: 15 May 1989, RTOA 1988 s.99(2).

<sup>1517</sup> Commencement: 15 May 1989, RTOA 1988 s.99(2).

any offence in respect of which an order could have been made under this section at the time the first order was made.

### **Licence not to be endorsed for interim disqualification**

#### ***RTOA 1988 s.26<sup>1518</sup>: Interim disqualification***

s.26(10) - where a court makes an order under this section in respect of any person, sections 44(1), 47(2), 91ZA(7) and 91A(5) of this Act shall not apply in relation to the order, but—

- (a) the court must send notice of the order to the Secretary of State, and
- (b) if the court which deals with the offender determines not to order him to be disqualified under section 34 or 35 of this Act, it must send notice of the determination to the Secretary of State.

s.26(11) - a notice sent by a court to the Secretary of State in pursuance of subsection (10) above must be sent in such manner and to such address and contain such particulars as the Secretary of State may determine.

### **Final disqualification period reduced by period of interim disqualification**

#### ***RTOA 1988 s.26<sup>1519</sup>: Interim disqualification***

s.26(12) - where on any occasion a court deals with an offender—

- (a) for an offence in respect of which an order was made under this section, or
  - (b) for two or more offences in respect of any of which such an order was made,
- any period of disqualification which is on that occasion imposed under section 34 or 35 of this Act shall be treated as reduced by any period during which he was disqualified by reason only of an order made under this section in respect of any of those offences.

### **3.7.2.3. Interpretation**

#### **Interpretation etc.**

#### ***RTOA 1988 s.26<sup>1520</sup>: Interim disqualification***

s.26(13) - any reference in this or any other Act (including any Act passed after this Act) to the length of a period of disqualification shall, unless the context otherwise requires, be construed as a reference to its length before any reduction under this section.

s.26(14) - in relation to licences which came into force before 1st June 1990, the references in this section to counterparts of licences shall be disregarded.

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<sup>1518</sup> Commencement: 15 May 1989, RTOA 1988 s.99(2).

<sup>1519</sup> Commencement: 15 May 1989, RTOA 1988 s.99(2).

<sup>1520</sup> Commencement: 15 May 1989, RTOA 1988 s.99(2).

### 3.7.3. Obligatory

#### 3.7.3.1. Duties to disqualify for minimum period

##### Duty to order disqualification for not less than 12 months

###### ***RTOA 1988 s.34<sup>1521</sup> : Disqualification for certain offences***

s.34(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.

##### Duty to order disqualification for not less than 24 months

###### ***RTOA 1988 s.34<sup>1522</sup> : Disqualification for certain offences***

s.34(4) - subject to subsection (3) above, subsection (1) above shall apply as if the reference to twelve months were a reference to two years—

- (a) in relation to a person convicted of—
  - (i) manslaughter, or in Scotland culpable homicide, or
  - (ii) an offence under section 1 of the Road Traffic Act 1988 (causing death by dangerous driving), or
  - (ia) an offence under section 1A of that Act (causing serious injury by dangerous driving), or
  - (iii) an offence under section 3A of that Act (causing death by careless driving while under the influence of drink or drugs), and
- (b) in relation to a person on whom more than one disqualification for a fixed period of 56 days or more has been imposed within the three years immediately preceding the commission of the offence.

s.34(4A) - for the purposes of subsection (4)(b) above there shall be disregarded any disqualification imposed under section 26 of this Act or section 147 of the Powers of Criminal Courts (Sentencing) Act 2000 or section 223A or 436A of the Criminal Procedure (Scotland) Act 1975 (offences committed by using vehicles) and any disqualification imposed in respect of an offence of stealing a motor vehicle, an offence under section 12 or 25 of the Theft Act 1968, an offence under section 178 of the Road Traffic Act 1988, or an attempt to commit such an offence.

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<sup>1521</sup> Commencement: 15 May 1988, RTOA 1988 s.99(2).

<sup>1522</sup> Commencement: 15 May 1988, RTOA 1988 s.99(2).

## Duty to disqualify for not less than 36 months

### ***RTOA 1988 s.34<sup>1523</sup>: Disqualification for certain offences***

- s.34(3) - where a person convicted of an offence under any of the following provisions of the Road Traffic Act 1988, that is—
- (aa) section 3A (causing death by careless driving when under the influence of drink or drugs),
  - (a) section 4(1) (driving or attempting to drive while unfit),
  - (b) section 5(1)(a) (driving or attempting to drive with excess alcohol),
  - (ba) section 5A(1)(a) and (2) (driving or attempting to drive with concentration of specified controlled drug above specified limit),
  - (c) section 7(6) (failing to provide a specimen) where that is an offence involving obligatory disqualification,
  - (d) section 7A(6) (failing to allow a specimen to be subjected to laboratory test) 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.

## Duty to give reasons where not disqualifying/endorsing or disqualifying for shorter than require period

### ***RTOA 1988 s.47<sup>1524</sup>: Supplementary provisions as to disqualifications and endorsements.***

- s.47(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.

## Duty of court to send licence etc. to Secretary of State

### ***RTOA 1988 s.47<sup>1525</sup>: Supplementary provisions as to disqualifications and endorsements.***

- s.47(2) - where a court orders the endorsement of the counterpart of any licence held by a person it may, and where a court orders the holder of a licence to be disqualified for a period of 56 days or more it must, send the licence and its counterpart, on their being produced to the court, to the Secretary of State; and if the court orders the endorsement but does not send the licence and its counterpart to the Secretary of State it must send him notice of the endorsement.
- s.47(2A) - subsection (2) above is subject to section 2(2) of and paragraph 7(2) of Schedule 1 to the Road Traffic (New Drivers) Act 1995 (obligation of court to send licence and its counterpart to the Secretary of State).

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<sup>1523</sup> Commencement: 15 May 1988, RTOA 1988 s.99(2).

<sup>1524</sup> Commencement: 1 July 1992, as inserted by RTA 1991 Sch.4 para.97.

<sup>1525</sup> Commencement: 1 July 1992, as inserted by RTA 1991 Sch.4 para.97.

s.47(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 and the counterpart of a licence so sent in pursuance of this section must be sent to such address as the Secretary of State may determine.

## Scotland

### ***RTOA 1988 s.34<sup>1526</sup>: Disqualification for certain offences***

s.34(5A) - in relation to Scotland, references in this section to the court include the justice of the peace court.

### **Does obligatory disqualification apply?**

### ***RTOA 1988 Sch.2<sup>1527</sup>: Prosecution and punishment of offences cross reference to separate document***

### **Length of disqualification**

### ***R. v Bagshawe [2013] EWCA Crim 127; [2013] 2 Cr. App. R. (S.) 62 (p.393)***

The statutory minimum period “is a minimum disqualification, not a normal or standard period.” (Haddon-Cave J, at [10])

### **3.7.3.2. Particular circumstances**

#### **Aiding and abetting etc.**

### ***RTOA 1988 s.34<sup>1528</sup>: Disqualification for certain offences***

s.34(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.

#### **Aggravated vehicle-taking**

### ***RTOA 1988 s.34<sup>1529</sup>: Disqualification for certain offences***

s.34(1A) - where a person is convicted of an offence under section 12A of the Theft Act 1968 (aggravated vehicle-taking), the fact that he did not drive the vehicle in question at any particular time or at all shall not be regarded as a special reason for the purposes of subsection (1) above.

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<sup>1526</sup> Commencement: 15 May 1988, RTOA 1988 s.99(2).

<sup>1527</sup> Commencement: 15 May 1989, RTOA 1988 s.99(2).

<sup>1528</sup> Commencement: 15 May 1988, RTOA 1988 s.99(2).

<sup>1529</sup> Commencement: 15 May 1988, RTOA 1988 s.99(2).

## Using a vehicle in a dangerous condition

### ***RTOA 1988 s.34<sup>1530</sup>: Disqualification for certain offences***

s.34(4B) - where a person convicted of an offence under section 40A of the Road Traffic Act 1988 (using vehicle in dangerous condition etc.) has within the three 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 six months.

### **3.7.3.3. Exemptions from disqualification**

### ***RTOA 1988 s.34<sup>1531</sup>: Disqualification for certain offences***

s.34(6) - this section is subject to section 48 of this Act.

### ***RTOA 1988 s.48<sup>1532</sup>: Exemption from disqualification and endorsement for certain construction and use offences***

- s.48(1) - where a person is convicted of an offence under section 40A of the Road Traffic Act 1988 (using vehicle in dangerous condition etc) the court must not:
- (a) order him to be disqualified, or
  - (b) order any particulars or penalty points to be endorsed on the counterpart of any licence held by him or on his driving record,
- if he proves that he did not know, and had no reasonable cause to suspect, that the use of the vehicle involved a danger of injury to any person.
- s.48(2) - where a person is convicted of an offence under section 41A of the Road Traffic Act 1988 (breach of requirement as to brakes, steering-gear or tyres) the court must not—
- (a) order him to be disqualified, or
  - (b) order any particulars or penalty points to be endorsed on the counterpart of any licence held by him or on his driving record,
- 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.
- s.48(3) - in relation to licences which came into force before 1st June 1990, the references in subsections (1) and (2) above to the counterpart of a licence shall be construed as references to the licence itself.

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<sup>1530</sup> Commencement: 15 May 1988, RTOA 1988 s.99(2).

<sup>1531</sup> Commencement: 15 May 1988, RTOA 1988 s.99(2).

<sup>1532</sup> Commencement: 15 May 1988, RTOA 1988 s.99(2).



#### 3.7.3.4. Extension of disqualification where custodial sentence imposed

##### ***RTOA 1988 s.35A<sup>1533</sup>: Extension of disqualification where custodial sentence also imposed***

- s.35A(1) - this section applies where a person is convicted in England and Wales of an offence for which the court—
- (a) imposes a custodial sentence, and
  - (b) orders the person to be disqualified under section 34 or 35.
- s.35A(2) - the order under section 34 or 35 must provide for the person to be disqualified for the appropriate extension period, in addition to the discretionary disqualification period.
- s.35A(3) - the discretionary disqualification period is the period for which, in the absence of this section, the court would have disqualified the person under section 34 or 35.
- s.35A(4) - the appropriate extension period is—
- (a) where an order under section 82A(2) of the Powers of Criminal Courts (Sentencing) Act 2000 (life sentence: determination of tariffs) is made in relation to the custodial sentence, a period equal to the part of the sentence specified in that order;
  - (b) in the case of a detention and training order under section 100 of that Act (offenders under 18: detention and training orders), a period equal to half the term of that order;
  - (e) where section 226A of the Criminal Justice Act 2003 (extended sentence for certain violent or sexual offences: persons 18 or over) applies in relation to the custodial sentence, a period equal to two-thirds of the term imposed pursuant to section 226A(5)(a) of that Act;
  - (f) where section 226B of that Act (extended sentence for certain violent or sexual offences: persons under 18) applies in relation to the custodial sentence, a period equal to two-thirds of the term imposed pursuant to section 226B(3)(a) of that Act;
  - (fa) in the case of a sentence under section 236A of that Act (special custodial sentence for certain offenders of particular concern), a period equal to half of the term imposed pursuant to section 236A(2)(a) of that Act;
  - (g) where an order under section 269(2) of that Act (determination of minimum term in relation to mandatory life sentence: early release) is made in relation to the custodial sentence, a period equal to the part of the sentence specified in that order;
  - (h) in any other case, a period equal to half the custodial sentence imposed.
- s.35A(5) - if a period determined under subsection (4) includes a fraction of a day, that period is to be rounded up to the nearest number of whole days.

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<sup>1533</sup> Commencement: 13 April 2009, as inserted by Coroners and Justice Act 2009 Sch.16 para.2(2), subject to transitional provisions specified in Sch.22 paras.29 and 34, SI 2015/819 art.2(b).

s.35A(7) - this section does not apply where—

- (a) the custodial sentence was a suspended sentence,
- (b) the court has made an order under section 269(4) of the Criminal Justice Act 2003 (determination of minimum term in relation to mandatory life sentence: no early release) in relation to the custodial sentence, or
- (c) the court has made an order under section 82A(4) of the Powers of Criminal Courts (Sentencing) Act 2000 (determination of minimum term in relation to discretionary life sentence: no early release) in relation to the custodial sentence.

s.35A(8) - subsection (9) applies where an amending order provides that the proportion of a prisoner's sentence referred to in section 243A(3)(a), 244(3)(a) of the Criminal Justice Act 2003 (release of prisoners in certain circumstances) is to be read as a reference to another proportion ("the new proportion").

s.35A(9) - the Secretary of State may by order—

- (a) if the amending order makes provision in respect of section 243A(3)(a) or 244(3)(a) of that Act, provide that the proportion specified in subsection (4)(h) of this section is to be read, in the case of a custodial sentence to which the amending order applies, as a reference to the new proportion.

s.35A(10) - an order under subsection (9) is to be made by statutory instrument and a draft of the statutory instrument containing the order must be laid before, and approved by a resolution of, each House of Parliament.

s.35A(11) - in this section—

*"amending order"* means an order under section 267 of the Criminal Justice Act 2003 (alteration by order of relevant proportion of sentence);

*"custodial sentence"* has the meaning given by section 76 of the Powers of Criminal Courts (Sentencing) Act 2000;

*"suspended sentence"* has the meaning given by section 189 of the Criminal Justice Act 2003.

***RTOA 1988 s.35B<sup>1534</sup>: Effect of custodial sentence in other cases***

s.35B(1) - this section applies where a person is convicted in England and Wales of an offence for which a court proposes to order the person to be disqualified under section 34 or 35 and—

- (a) the court proposes to impose on the person a custodial sentence (other than a suspended sentence) for another offence, or
- (b) at the time of sentencing for the offence, a custodial sentence imposed on the person on an earlier occasion has not expired.

s.35B(2) - in determining the period for which the person is to be disqualified under section 34 or 35, the court must have regard to the consideration in subsection (3) if and to the extent that it is appropriate to do so.

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<sup>1534</sup> Commencement: 13 April 2009, as inserted by Coroners and Justice Act 2009 Sch.16 para.2(2), subject to transitional provisions specified in Sch.22 paras.29 and 34, SI 2015/819 art.2(b).

- s.35B(3) - the consideration is the diminished effect of disqualification as a distinct punishment if the person who is disqualified is also detained in pursuance of a custodial sentence.
- s.35B(4) - if the court proposes to order the person to be disqualified under section 34 or 35 and to impose a custodial sentence for the same offence, the court may not in relation to that disqualification take that custodial sentence into account for the purposes of subsection (2).
- s.35B(5) - in this section “*custodial sentence*” and “*suspended sentence*” have the same meaning as in section 35A.

### 3.7.4. Discretionary: General

#### 3.7.4.1. General

##### Absolute or conditional discharge

##### ***RTOA 1988 s.46<sup>1535</sup>: Combination of disqualification and endorsement with probation orders and orders for discharge***

s.46(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 the counterpart of any licence held by him or on his driving record,

is to be taken into account, notwithstanding anything in section 14(1) of the Powers of Criminal Courts (Sentencing) Act 2000 (conviction of offender 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.

##### Duty of court to send licence etc. to Secretary of State

##### ***RTOA 1988 s.47<sup>1536</sup>: Supplementary provisions as to disqualifications and endorsements.***

- s.47(2) - where a court orders the endorsement of the counterpart of any licence held by a person it may, and where a court orders the holder of a licence to be disqualified for a period of 56 days or more it must, send the licence and its counterpart, on their being produced to the court, to the Secretary of State; and if the court orders the endorsement but does not send the licence and its counterpart to the Secretary of State it must send him notice of the endorsement.
- s.47(2A) - subsection (2) above is subject to section 2(2) of and paragraph 7(2) of Schedule 1 to the Road Traffic (New Drivers) Act 1995 (obligation of court to send licence and its counterpart to the Secretary of State).
- s.47(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 and the counterpart of a licence so sent in pursuance of this section must be sent to such address as the Secretary of State may determine.

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<sup>1535</sup> Commencement: 15 May 1989, RTOA 1988 s.99(2).

<sup>1536</sup> Commencement: 1 July 1992, as inserted by RTA 1991 Sch.4 para.97.

### 3.7.4.2. Any offence

#### Availability and power

#### ***PCC(S)A 2000 s.146<sup>1537</sup>: Driving disqualification for any offence***

s.146(1) - the court by or before which a person is convicted of an offence committed after 31st December 1997 may, instead of or in addition to dealing with him in any other way, order him to be disqualified, for such period as it thinks fit, for holding or obtaining a driving licence.

#### Mandatory or required sentences

#### ***PCC(S)A 2000 s.146<sup>1538</sup>: Driving disqualification for any offence***

s.146(2) - where the person is convicted of an offence the sentence for which is fixed by law or falls to be imposed under a provision mentioned in subsection (2A), subsection (1) above shall have effect as if the words “instead of or” were omitted.

s.146(2A) - the provisions referred to in subsection (2) are—

- (a) section 1(2B) or 1A(5) of the Prevention of Crime Act 1953;
- (b) section 51A(2) of the Firearms Act 1968;
- (c) section 139(6B), 139A(5B) or 139AA(7) of the Criminal Justice Act 1988;
- (d) section 110(2) or 111(2) of this Act;
- (e) section 224A, 225(2) or 226(2) of the Criminal Justice Act 2003;
- (f) section 29(4) or (6) of the Violent Crime Reduction Act 2006.

#### Requirement to be notified by Secretary of State

#### ***PCC(S)A 2000 s.146<sup>1539</sup>: Driving disqualification for any offence***

s.146(3) - a court shall not make an order under subsection (1) above unless the court has been notified by the Secretary of State that the power to make such orders is exercisable by the court and the notice has not been withdrawn.

#### Court must require offender to produce licence etc.

#### ***PCC(S)A 2000 s.146<sup>1540</sup>: Driving disqualification for any offence***

s.146(4) - a court which makes an order under this section disqualifying a person for holding or obtaining a driving licence shall require him to produce—

- (a) any such licence held by him;
- (aa) in the case where he holds a Northern Ireland licence (within the meaning of Part 3 of the Road Traffic Act 1988), his Northern Ireland licence; or

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<sup>1537</sup> Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

<sup>1538</sup> Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

<sup>1539</sup> Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

<sup>1540</sup> Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

- (b) in the case where he holds a Community licence (within the meaning of Part III of the Road Traffic Act 1988), his Community licence.

### Interpretation

#### ***PCC(S)A 2000 s.146<sup>1541</sup>: Driving disqualification for any offence***

s.146(5) - in this section—

“*driving licence*” means a licence to drive a motor vehicle granted under Part III of the Road Traffic Act 1988;

#### **3.7.4.3. Used for the purposes of crime**

### Availability

#### ***PCC(S)A 2000 s.147<sup>1542</sup>: Driving disqualification where vehicle used for purposes of crime***

s.147(1) - this section applies where a person:

- (a) is convicted before the Crown Court of an offence punishable on indictment with imprisonment for a term of two years or more; or
- (b) having been convicted by a magistrates’ court of such an offence, is committed under section 3 above to the Crown Court for sentence.

s.147(2) - this section also applies where a person is convicted by or before any court of common assault or of any other offence involving an assault (including an offence of aiding, abetting, counselling or procuring, or inciting to the commission of, an offence).

### Test to apply

#### ***PCC(S)A 2000 s.147<sup>1543</sup>: Driving disqualification where vehicle used for purposes of crime***

- s.147(3) - if, in a case to which this section applies by virtue of subsection (1) above, the Crown Court is satisfied that a motor vehicle was used (by the person convicted or by anyone else) for the purpose of committing, or facilitating the commission of, the offence in question, the court may order the person convicted to be disqualified, for such period as the court thinks fit, for holding or obtaining a driving licence.
- s.147(4) - if, in a case to which this section applies by virtue of subsection (2) above, the court is satisfied that the assault was committed by driving a motor vehicle, the court may order the person convicted to be disqualified, for such period as the court thinks fit, for holding or obtaining a driving licence.

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<sup>1541</sup> Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

<sup>1542</sup> Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

<sup>1543</sup> Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

### **Court must require offender to produce licence etc.**

#### ***PCC(S)A 2000 s.147<sup>1544</sup>: Driving disqualification where vehicle used for purposes of crime***

- s.147(5) - a court which makes an order under this section disqualifying a person for holding or obtaining a driving licence shall require him to produce:
- (a) any such licence held by him;
  - (aa) in the case where he holds a Northern Ireland licence (within the meaning of Part 3 of the Road Traffic Act 1988), his Northern Ireland licence; or
  - (b) in the case where he holds a Community licence (within the meaning of Part III of the Road Traffic Act 1988), his Community licence.

### **Facilitating the commission of an offence**

#### ***PCC(S)A 2000 s.147<sup>1545</sup>: Driving disqualification where vehicle used for purposes of crime***

- s.147(6) - facilitating the commission of an offence shall be taken for the purposes of this section to include the taking of any steps after it has been committed for the purpose of disposing of any property to which it relates or of avoiding apprehension or detection.

### **Conspiracy**

#### ***R. v Langley [2014] EWCA Crim 1284***

In *R. v Devine* (1990) 12 Cr App R 235 the court held that there was a power to disqualify in a conspiracy case. That was under the 1973 Act. Section 147(6) was in similar terms to its equivalent under the 1973 Act, and so it followed that there was a power to disqualify under s.147 in conspiracy cases. In the instant case, however, it was in any event open to the court to disqualify using section 146, as had been done at first instance.

### **Interpretation**

#### ***PCC(S)A 2000 s.147<sup>1546</sup>: Driving disqualification where vehicle used for purposes of crime***

- s.147(7) - in this section “*driving licence*” has the meaning given by section 146(5) above.

#### **3.7.4.4. Extension of disqualification**

#### ***PCC(S)A 2000 s.147A<sup>1547</sup>: Extension of disqualification where custodial sentence also imposed***

- s.147A(1) - this section applies where a person is convicted of an offence for which the court—
- (a) imposes a custodial sentence, and
  - (b) orders the person to be disqualified under section 146 or 147 for holding or obtaining a driving licence.

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<sup>1544</sup> Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

<sup>1545</sup> Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

<sup>1546</sup> Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

<sup>1547</sup> Commencement: 13 April 2015, as inserted by Coroners and Justice Act 2009 Sch.16 para.5(1), SI 2015/819 art.2(b), subject to transitional provisions as specified in CJA 2009 Sch.22 para.29.

- s.147A(2) - the order under section 146 or 147 must provide for the person to be disqualified for the appropriate extension period, in addition to the discretionary disqualification period.
- s.147A(3) - the discretionary disqualification period is the period for which, in the absence of this section, the court would have disqualified the person under section 146 or 147.
- s.147A(4) - the appropriate extension period is—
- (a) where an order under section 82A(2) of this Act (determination of tariffs) is made in relation to the custodial sentence, a period equal to the part of the sentence specified in that order;
  - (b) in the case of a detention and training order under section 100 of this Act (offenders under 18: detention and training orders), a period equal to half the term of that order;
  - (c) where an order under section 181 of the Criminal Justice Act 2003 (prison sentences of less than 12 months) is made in relation to the custodial sentence, a period equal to the custodial period specified pursuant to section 181(3)(a) of that Act less any relevant discount;
  - (d) where an order under section 183 of that Act (intermittent custody orders) is made in relation to the custodial sentence, a period equal to the number of custodial days specified pursuant to section 183(1)(a) of that Act less any relevant discount;
  - (e) where section 227 of that Act (extended sentence for certain violent or sexual offences: persons 18 or over) applies in relation to the custodial sentence, a period equal to half the term imposed pursuant to section 227(2C)(a) of the Criminal Justice Act 2003;
  - (f) where section 228 of that Act (extended sentence for certain violent or sexual offences: persons under 18) applies in relation to the custodial sentence, a period equal to half the term imposed pursuant to section 228(2B)(a) of that Act;
  - (fa) in the case of a sentence under section 236A of that Act (special custodial sentence for certain offenders of particular concern), a period equal to half of the term imposed pursuant to section 236A(2)(a) of that Act;
  - (g) where an order under section 269(2) of that Act (determination of minimum term in relation to mandatory life sentence: early release) is made in relation to the custodial sentence, a period equal to the part of the sentence specified in that order;
  - (h) in any other case, a period equal to half the custodial sentence imposed.
- (5) If a period determined under subsection (4) includes a fraction of a day, that period is to be rounded up to the nearest number of whole days.
- s.147A(7) - this section does not apply where—
- (a) the custodial sentence was a suspended sentence,
  - (b) the court has made an order under section 269(4) of the Criminal Justice Act 2003 (determination of minimum term in relation to mandatory life sentence: no early release) in relation to the custodial sentence, or
  - (c) the court has made an order under section 82A(4) of this Act (determination of minimum term in relation to discretionary life sentence: no early release) in relation to the custodial sentence.



s.147A(8) - subsection (9) applies where an amending order provides that the proportion of a prisoner's sentence referred to in section 244(3)(a) or 247(2) of the Criminal Justice Act 2003 (release of prisoners in certain circumstances) is to be read as a reference to another proportion ("the new proportion").

s.147A(9) - the Secretary of State may by order—

- (a) if the amending order makes provision in respect of section 244(3)(a) of that Act, provide that the proportion specified in subsection (4)(h) of this section is to be read, in the case of a custodial sentence to which the amending order applies, as a reference to the new proportion;
- (b) if the amending order makes provision in respect of section 247(2) of that Act, provide that the proportion specified in subsection (4)(e) and (f) of this section is to be read, in the case of a custodial sentence to which the amending order applies, as a reference to the new proportion.

s.147A(10) - in this section—

*"amending order"* means an order under section 267 of the Criminal Justice Act 2003 (alteration by order of relevant proportion of sentence);

*"driving licence"* means a licence to drive a motor vehicle granted under Part 3 of the Road Traffic Act 1988;

*"suspended sentence"* has the meaning given by section 189 of the Criminal Justice Act 2003.

***PCC(S)A 2000 s.147B<sup>1548</sup>: Effect of custodial sentence in other cases***

s.147B(1) - this section applies where a person is convicted of an offence for which a court proposes to order the person to be disqualified under section 146 or 147 for holding or obtaining a driving licence and—

- (a) the court proposes to impose on the person a custodial sentence (other than a suspended sentence) for another offence, or
- (b) at the time of sentencing for the offence, a custodial sentence imposed on the person on an earlier occasion has not expired.

s.147B(2) - in determining the period for which the person is to be disqualified under section 146 or 147, the court must have regard to the consideration in subsection (3) if and to the extent that it is appropriate to do so.

s.147B(3) - the consideration is the diminished effect of disqualification as a distinct punishment if the person who is disqualified is also detained in pursuance of a custodial sentence.

s.147B(4) - if the court proposes to order the person to be disqualified under section 146 or 147 and to impose a custodial sentence for the same offence, the court may not in relation to that disqualification take that custodial sentence into account for the purposes of subsection (2).

s.147B(5) - in this section *"suspended sentence"* has the same meaning as in section 147A.

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<sup>1548</sup> Commencement: 13 April 2015, as inserted by Coroners and Justice Act 2009 Sch.16 para.5(1), SI 2015/819 art.2(b), subject to transitional provisions as specified in CJA 2009 Sch.22 para.29.

### 3.7.5. Discretionary: Road traffic

#### Power to order

#### ***RTOA 1988 s.34<sup>1549</sup>: Disqualification for certain offences***

- s.34(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 twelve, 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.

#### Does discretionary disqualification apply?

#### ***RTOA 1988 Sch.2<sup>1550</sup>: Prosecution and punishment of offences***

See separate document [Schedule 2 to the RTOA 1988](#).

#### Duty of court to send licence etc. to Secretary of State

#### ***RTOA 1988 s.47<sup>1551</sup>: Supplementary provisions as to disqualifications and endorsements.***

- s.47(2) - where a court orders the endorsement of the counterpart of any licence held by a person it may, and where a court orders the holder of a licence to be disqualified for a period of 56 days or more it must, send the licence and its counterpart, on their being produced to the court, to the Secretary of State; and if the court orders the endorsement but does not send the licence and its counterpart to the Secretary of State it must send him notice of the endorsement.
- s.47(2A) - subsection (2) above is subject to section 2(2) of and paragraph 7(2) of Schedule 1 to the Road Traffic (New Drivers) Act 1995 (obligation of court to send licence and its counterpart to the Secretary of State).
- s.47(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 and the counterpart of a licence so sent in pursuance of this section must be sent to such address as the Secretary of State may determine.

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<sup>1549</sup> Commencement: 15 May 1988, RTOA 1988 s.99(2).

<sup>1550</sup> Commencement: 15 May 1989, RTOA 1988 s.99(2).

<sup>1551</sup> Commencement: 1 July 1992, as inserted by RTA 1991 Sch.4 para.97.

### 3.7.6. Reduced disqualification for attendance on courses

#### 3.7.6.1. When does it apply?

##### Availability

##### ***RTOA 1988 s.34A<sup>1552</sup>: Reduced disqualification for attendance on courses***

s.34A(1) - this section applies where–

- (a) a person is convicted of a relevant drink offence or a specified offence by or before a court, and
- (b) the court makes an order under section 34 of this Act disqualifying him for a period of not less than twelve months.

s.34A(8) - a court shall not make an order under this section in the case of an offender convicted of a specified offence if–

- (a) the offender has, during the period of three years ending with the date on which the offence was committed, committed a specified offence and successfully completed an approved course pursuant to an order made under this section or section 30A of this Act on conviction of that offence, or
- (b) the specified offence was committed during his probationary period.

s.34A(9) - a court shall not make an order under this section in the case of an offender unless–

- (a) the court 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 informed the offender (orally or in writing and in ordinary language) of the effect of the order and of the amount of the fees which he is required to pay for the course and when he must pay them, and
- (d) the offender has agreed that the order should be made.

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<sup>1552</sup> Commencement: 1 July 1992, as inserted by RTA 1991 s.30. RSA 2006 s.35 inserted a new section 34A-C, in force on 21 December 2012, SI 2012/2938 art.2(1)(a) for the purposes of the making of applications for approval, the approval, and the appeal against refusal of approval or conditional approval of courses for persons convicted of a relevant drink offence, and on 24 June 2013 for all purposes having application where a person is convicted of a relevant drink offence, SI 2012/2938 art.2(1)(b). Otherwise not in force.

## Definition of “relevant drink offence”

### **RTOA 1988 s.34A<sup>1553</sup>: Reduced disqualification for attendance on courses**

s.34A(2) - in this section “*relevant drink offence*” means–

- (a) an offence under paragraph (a) of subsection (1) of section 3A of the Road Traffic Act 1988 (causing death by careless driving when unfit to drive through drink) committed when unfit to drive through drink,
- (b) an offence under paragraph (b) of that subsection (causing death by careless driving with excess alcohol),
- (c) an offence under paragraph (c) of that subsection (failing to provide a specimen) where the specimen is required in connection with drink or consumption of alcohol,
- (d) an offence under section 4 of that Act (driving or being in charge when under influence of drink) committed by reason of unfitness through drink,
- (e) an offence under section 5(1) of that Act (driving or being in charge with excess alcohol),
- (f) an offence under section 7(6) of that Act (failing to provide a specimen) committed in the course of an investigation into an offence within any of the preceding paragraphs, or
- (g) an offence under section 7A(6) of that Act (failing to allow a specimen to be subjected to a laboratory test) in the course of an investigation into an offence within any of the preceding paragraphs.

## Definition of “specified offence”

### **RTOA 1988 s.34A<sup>1554</sup>: Reduced disqualification for attendance on courses**

s.34A(3) - in this section “*specified offence*” means–

- (a) an offence under section 3 of the Road Traffic Act 1988 (careless, and inconsiderate, driving),
- (b) an offence under section 36 of that Act (failing to comply with traffic signs),
- (c) an offence under section 17(4) of the Road Traffic Regulation Act 1984 (use of special road contrary to scheme or regulations), or
- (d) an offence under section 89(1) of that Act (exceeding speed limit).

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<sup>1553</sup> Commencement: 1 July 1992, as inserted by RTA 1991 s.30. RSA 2006 s.35 inserted a new section 34A-C, in force on 21 December 2012, SI 2012/2938 art.2(1)(a) for the purposes of the making of applications for approval, the approval, and the appeal against refusal of approval or conditional approval of courses for persons convicted of a relevant drink offence, and on 24 June 2013 for all purposes having application where a person is convicted of a relevant drink offence, SI 2012/2938 art.2(1)(b). Otherwise not in force.

<sup>1554</sup> Commencement: 1 July 1992, as inserted by RTA 1991 s.30. RSA 2006 s.35 inserted a new section 34A-C, in force on 21 December 2012, SI 2012/2938 art.2(1)(a) for the purposes of the making of applications for approval, the approval, and the appeal against refusal of approval or conditional approval of courses for persons convicted of a relevant drink offence, and on 24 June 2013 for all purposes having application where a person is convicted of a relevant drink offence, SI 2012/2938 art.2(1)(b). Otherwise not in force.

s.34A(4) - but the Secretary of State may by regulations amend subsection (3) above by adding other offences or removing offences.

### Power to order

#### ***RTOA 1988 s.34A<sup>1555</sup>: Reduced disqualification for attendance on courses***

s.34A(5) - where this section applies, the court may make an order that the period of disqualification imposed under section 34 of this Act (“the unreduced period”) shall be reduced if, by the relevant date, the offender satisfactorily completes an approved course specified in the order.

### Definition of “*an approved course*” and “*the relevant date*”

#### ***RTOA 1988 s.34A<sup>1556</sup>: Reduced disqualification for attendance on courses***

s.34A(6) - in subsection (5) above—

“*an approved course*” means a course approved by the appropriate national authority for the purposes of this section in relation to the description of offence of which the offender is convicted, and

“*the relevant date*” means such date, at least two months before the last day of the period of disqualification as reduced by the order, as is specified in the order.

### The length of the reduction

#### ***RTOA 1988 s.34A<sup>1557</sup>: Reduced disqualification for attendance on courses***

s.34A(7) - the reduction made in a period of disqualification by an order under this section is a period specified in the order of—

(a) not less than three months, and

(b) not more than one quarter of the unreduced period,

(and, accordingly, where the unreduced period is twelve months, the reduced period is nine months).

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<sup>1555</sup> Commencement: 1 July 1992, as inserted by RTA 1991 s.30. RSA 2006 s.35 inserted a new section 34A-C, in force on 21 December 2012, SI 2012/2938 art.2(1)(a) for the purposes of the making of applications for approval, the approval, and the appeal against refusal of approval or conditional approval of courses for persons convicted of a relevant drink offence, and on 24 June 2013 for all purposes having application where a person is convicted of a relevant drink offence, SI 2012/2938 art.2(1)(b). Otherwise not in force.

<sup>1556</sup> Commencement: 1 July 1992, as inserted by RTA 1991 s.30. RSA 2006 s.35 inserted a new section 34A-C, in force on 21 December 2012, SI 2012/2938 art.2(1)(a) for the purposes of the making of applications for approval, the approval, and the appeal against refusal of approval or conditional approval of courses for persons convicted of a relevant drink offence, and on 24 June 2013 for all purposes having application where a person is convicted of a relevant drink offence, SI 2012/2938 art.2(1)(b). Otherwise not in force.

<sup>1557</sup> Commencement: 1 July 1992, as inserted by RTA 1991 s.30. RSA 2006 s.35 inserted a new section 34A-C, in force on 21 December 2012, SI 2012/2938 art.2(1)(a) for the purposes of the making of applications for approval, the approval, and the appeal against refusal of approval or conditional approval of courses for persons convicted of a relevant drink offence, and on 24 June 2013 for all purposes having application where a person is convicted of a relevant drink offence, SI 2012/2938 art.2(1)(b). Otherwise not in force.

### 3.7.6.2. Certificates of completion of courses

#### ***RTOA 1988 s.34B<sup>1558</sup>: Certificates of completion of courses***

- s.34B(1) - an offender shall be regarded for the purposes of section 34A of this Act as having completed a course satisfactorily if (and only if) a certificate that he has done so is received by the proper officer of the supervising court before the end of the unreduced period.
- s.34B(2) - if a certificate under subsection (1) above is so received before the end of the unreduced period but after the end of the period which would (apart from this subsection) be the reduced period, the reduced period is to be taken to end with the day on which the certificate is so received.
- s.34B(3) - a certificate under subsection (1) above is to be given by the course provider and shall be in such form, and contain such particulars, as may be prescribed by, or determined in accordance with, regulations made by the appropriate national authority.
- s.34B(4) - a course provider must give a certificate under subsection (1) above to the offender not later than fourteen days after the date specified in the order as the latest date for the completion of the course unless the offender—
- (a) fails to make due payment of fees for the course,
  - (b) fails to attend the course in accordance with the course provider's reasonable instructions, or
  - (c) fails to comply with any other reasonable requirement of the course provider.
- s.34B(5) - where a course provider decides not to give a certificate under subsection (1) above to the offender, he shall give written notice of the decision to the offender as soon as possible, and in any event not later than fourteen days after the date specified in the order as the latest date for completion of the course.
- s.34B(6) - an offender to whom a notice is given under subsection (5) above may, within such period as may be prescribed by rules of court, apply to the supervising court, or (if the supervising court is not the Crown Court, the High Court of Justiciary or the relevant local court) to either the supervising court or the relevant local court, for a declaration that the course provider's decision not to give a certificate under subsection (1) above was contrary to subsection (4) above.
- s.34B(7) - if the court grants the application, section 34A of this Act shall have effect as if the certificate had been duly received by the proper officer of the supervising court.
- s.34B(8) - if fourteen days after the date specified in the order as the latest date for completion of the course the course provider has given neither a certificate under subsection (1) above nor a notice under subsection (5) above, the offender may, within such period as may be prescribed by rules of court, apply to the supervising court, or (if the supervising court is not the Crown Court, the High Court of Justiciary or the relevant

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<sup>1558</sup> Commencement: 1 July 1992, as inserted by RTA 1991 s.30. RSA 2006 s.35 inserted a new section 34A-C, in force on 21 December 2012, SI 2012/2938 art.2(1)(a) for the purposes of the making of applications for approval, the approval, and the appeal against refusal of approval or conditional approval of courses for persons convicted of a relevant drink offence, and on 24 June 2013 for all purposes having application where a person is convicted of a relevant drink offence, SI 2012/2938 art.2(1)(b). Otherwise not in force.

local court) to either the supervising court or the relevant local court, for a declaration that the course provider is in default.

- s.34B(9) - if the court grants the application, section 34A of this Act shall have effect as if the certificate had been duly received by the proper officer of the supervising court.
- s.34B(10) - a notice under subsection (5) above shall specify the ground on which it is given; and the appropriate national authority may by regulations make provision as to the form of notices under that subsection and as to the circumstances in which they are to be treated as given.
- s.34B(11) - where the proper officer of a court receives a certificate under subsection (1) above, or a court grants an application under subsection (6) or (8) above, the proper officer or court must send notice of that fact to the Secretary of State; and the notice must be sent in such manner and to such address, and must contain such particulars, as the Secretary of State may determine.

### 3.7.6.3. Supplementary provisions

#### Guidance

#### ***RTOA 1988 s.34C<sup>1559</sup> : Provisions supplementary to sections 34A to 34BA***

- s.34C(1) - the appropriate national authority may issue guidance to course providers, or to any category of course provider, as to the conduct of courses approved for the purposes of section 34A of this Act; and–
  - (a) course providers shall have regard to any guidance given to them under this subsection, and
  - (b) in determining for the purposes of section 34B of this Act whether any instructions or requirements of a course provider were reasonable, a court shall have regard to any guidance given to him under this subsection.

#### Power to make regulations

#### ***RTOA 1988 s.34C<sup>1560</sup> : Provisions supplementary to sections 34A to 34BA***

- s.34C(2) - the Secretary of State may by regulations make provision–
  - (a) amending section 34A(1)(b) of this Act by substituting for the period for the time being specified there a different period,

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<sup>1559</sup> Commencement: 1 July 1992, as inserted by RTA 1991 s.30. RSA 2006 s.35 inserted a new section 34A-C, in force on 21 December 2012, SI 2012/2938 art.2(1)(a) for the purposes of the making of applications for approval, the approval, and the appeal against refusal of approval or conditional approval of courses for persons convicted of a relevant drink offence, and on 24 June 2013 for all purposes having application where a person is convicted of a relevant drink offence, SI 2012/2938 art.2(1)(b). Otherwise not in force.

<sup>1560</sup> Commencement: 1 July 1992, as inserted by RTA 1991 s.30. RSA 2006 s.35 inserted a new section 34A-C, in force on 21 December 2012, SI 2012/2938 art.2(1)(a) for the purposes of the making of applications for approval, the approval, and the appeal against refusal of approval or conditional approval of courses for persons convicted of a relevant drink offence, and on 24 June 2013 for all purposes having application where a person is convicted of a relevant drink offence, SI 2012/2938 art.2(1)(b). Otherwise not in force.

- (b) amending section 34A(7) of this Act by substituting for the period for the time being specified there a different period, or by substituting for the fraction of the unreduced period for the time being specified there a different fraction of that period, (or by doing both), or
- (c) amending section 34A(8)(a) of this Act by substituting for the period for the time being specified there a different period.

- s.34C(4) - any power to make regulations under section 34A, 34B or 34BA of this Act or this section includes power to make different provision for different cases, and to make such incidental or supplementary provision as appears necessary or appropriate.
- s.34C(5) - any power to make regulations under section 34A, 34B or 34BA of this Act or this section shall be exercisable by statutory instrument.
- s.34C(6) - no regulations shall be made under section 34A of this Act or this section unless a draft of the regulations has been laid before, and approved by a resolution of, each House of Parliament.
- s.34C(7) - a statutory instrument containing regulations made under section 34B or 34BA of this Act by the Secretary of State shall be subject to annulment in pursuance of a resolution of either House of Parliament.

## Interpretation

### ***RTOA 1988 s.34C<sup>1561</sup>: Provisions supplementary to sections 34A to 34BA***

- s.34C(3) - in sections 34A to 34BA of this Act and this section–
  - “*appropriate national authority*” means (as respects Wales) the National Assembly for Wales and (otherwise) the Secretary of State;
  - “*course provider*”, in relation to a course, means the person by whom it is, or is to be, provided;
  - “*probationary period*” has the meaning given in section 1 of the Road Traffic (New Drivers) Act 1995;
  - “*proper officer*” means–
    - (a) in relation to a magistrates’ court in England and Wales, the designated officer for the court, and
    - (b) otherwise, the clerk of the court;
  - “*relevant local court*”, in relation to an order under section 34A of this Act in the case of an offender, means–
    - (a) in England and Wales, a magistrates’ court acting for the local justice area in which the offender resides, and

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<sup>1561</sup> Commencement: 1 July 1992, as inserted by RTA 1991 s.30. RSA 2006 s.35 inserted a new section 34A-C, in force on 21 December 2012, SI 2012/2938 art.2(1)(a) for the purposes of the making of applications for approval, the approval, and the appeal against refusal of approval or conditional approval of courses for persons convicted of a relevant drink offence, and on 24 June 2013 for all purposes having application where a person is convicted of a relevant drink offence, SI 2012/2938 art.2(1)(b). Otherwise not in force.



- (b) in Scotland, the sheriff court for the district where the offender resides or, where the order is made by a stipendiary magistrate and the offender resides within his commission area, the district court for that area; and

*“supervising court”*, in relation to an order under section 34A of this Act, means–

- (a) in England and Wales, if the Crown Court made the order the Crown Court and otherwise a magistrates’ court acting for the same local justice area as the court which made the order, and
- (b) in Scotland, the court which made the order.

### 3.7.7. Totting up

#### 3.7.7.1. Duty to disqualify

##### Availability

##### ***RTOA 1988 s.35<sup>1562</sup>: Disqualification for repeated offences***

s.35(1A) - subsection (1) above 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 section 34 of this Act.

##### Duty to disqualify where penalty points number 12 or more

##### ***RTOA 1988 s.35<sup>1563</sup>: Disqualification for repeated offences***

s.35(1) - where—

- (a) a person is convicted of an offence to which this subsection applies, 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.

##### Minimum period

##### ***RTOA 1988 s.35<sup>1564</sup>: Disqualification for repeated offences***

s.35(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 for a fixed period of 56 days or more and 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.

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<sup>1562</sup> Commencement: 15 May 1989, RTOA 1988 s.99(2).

<sup>1563</sup> Commencement: 15 May 1989, RTOA 1988 s.99(2).

<sup>1564</sup> Commencement: 15 May 1989, RTOA 1988 s.99(2).

## More than one offence

### ***RTOA 1988 s.35<sup>1565</sup>: Disqualification for repeated offences***

- s.35(3) - where an offender is convicted on the same occasion of more than one offence to which subsection (1) above applies—
- (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.

## Limitations

### ***RTOA 1988 s.35<sup>1566</sup>: Disqualification for repeated offences***

- s.35(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.

## Interpretation

### ***RTOA 1988 s.35<sup>1567</sup>: Disqualification for repeated offences***

- s.35(5) - references in this section to disqualification do not include a disqualification imposed under section 26 of this Act or section 147 of the Powers of Criminal Courts (Sentencing) Act 2000 or section 223A or 436A of the Criminal Procedure (Scotland) Act 1975 (offences committed by using vehicles) or a disqualification imposed in respect of an offence of stealing a motor vehicle, an offence under section 12 or 25 of the Theft Act 1968, an offence under section 178 of the Road Traffic Act 1988, or an attempt to commit such an offence.

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<sup>1565</sup> Commencement: 15 May 1989, RTOA 1988 s.99(2).

<sup>1566</sup> Commencement: 15 May 1989, RTOA 1988 s.99(2).

<sup>1567</sup> Commencement: 15 May 1989, RTOA 1988 s.99(2).

## **Aiding and abetting etc.**

### ***RTOA 1988 s.35<sup>1568</sup>: Disqualification for repeated offences***

s.35(5A) - the preceding provisions of this section 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.

## **Duty to give reasons where not disqualifying/endorsing or disqualifying for shorter than require period**

### ***RTOA 1988 s.47<sup>1569</sup>: Supplementary provisions as to disqualifications and endorsements.***

s.47(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.

## **Duty of court to send licence etc. to Secretary of State**

### ***RTOA 1988 s.47<sup>1570</sup>: Supplementary provisions as to disqualifications and endorsements.***

- s.47(2) - where a court orders the endorsement of the counterpart of any licence held by a person it may, and where a court orders the holder of a licence to be disqualified for a period of 56 days or more it must, send the licence and its counterpart, on their being produced to the court, to the Secretary of State; and if the court orders the endorsement but does not send the licence and its counterpart to the Secretary of State it must send him notice of the endorsement.
- s.47(2A) - subsection (2) above is subject to section 2(2) of and paragraph 7(2) of Schedule 1 to the Road Traffic (New Drivers) Act 1995 (obligation of court to send licence and its counterpart to the Secretary of State).
- s.47(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 and the counterpart of a licence so sent in pursuance of this section must be sent to such address as the Secretary of State may determine.

## **Scotland**

### ***RTOA 1988 s.35<sup>1571</sup>: Disqualification for repeated offences***

s.35(6) - in relation to Scotland, references in this section to the court include the justice of the peace court.

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<sup>1568</sup> Commencement: 15 May 1989, RTOA 1988 s.99(2).

<sup>1569</sup> Commencement: 1 July 1992, as inserted by RTA 1991 Sch.4 para.97.

<sup>1570</sup> Commencement: 1 July 1992, as inserted by RTA 1991 Sch.4 para.97.

<sup>1571</sup> Commencement: 15 May 1989, RTOA 1988 s.99(2).

### 3.7.7.2. Number of points to be taken into account

#### Determining the number of points

##### ***RTOA 1988 s.29<sup>1572</sup>: Penalty points to be taken into account on conviction***

- s.29(1) - where a person is convicted of an offence involving obligatory endorsement, 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, disregarding any offence in respect of which an order under section 34 of this Act is made, and
  - (b) any that were on a previous occasion ordered to be endorsed on the counterpart of any licence held by him or on his driving record, unless the offender has since that occasion and before the conviction been disqualified under section 35 of this Act.
- s.29(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.

*Note: The effect is that (a) points are not taken into account where an order for obligatory or discretionary disqualification is made and (b) a “totting up” disqualification erases penalty points. The relevant date for “wiping the slate clean” is the date of sentence, not conviction, see R. v Brentwood Justices ex parte Richardson (1992) 95 Cr. App. R. 187.*

#### Licenses in force pre-1990

##### ***RTOA 1988 s.29<sup>1573</sup>: Penalty points to be taken into account on conviction***

- s.29(3) - in relation to licences which came into force before 1st June 1990, the reference in subsection (1) above to the counterpart of a licence shall be construed as a reference to the licence itself.

#### Absolute or conditional discharge

##### ***RTOA 1988 s.46<sup>1574</sup>: Combination of disqualification and endorsement with probation orders and orders for discharge***

- s.46(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 the counterpart of any licence held by him or on his driving record,
- is to be taken into account, notwithstanding anything in section 14(1) of the Powers of Criminal Courts (Sentencing) Act 2000 (conviction of offender 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.

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<sup>1572</sup> Commencement: 15 May 1989, RTOA 1988 s.99(2).

<sup>1573</sup> Commencement: 15 May 1989, RTOA 1988 s.99(2).

<sup>1574</sup> Commencement: 15 May 1989, RTOA 1988 s.99(2).

### 3.7.7.3. Exemptions

#### **RTOA 1988 s.35<sup>1575</sup>: Disqualification for repeated offences**

s.35(7) - this section is subject to section 48 of this Act.

#### **RTOA 1988 s.48<sup>1576</sup>: Exemption from disqualification and endorsement for certain construction and use offences**

s.48(1) - where a person is convicted of an offence under section 40A of the Road Traffic Act 1988 (using vehicle in dangerous condition etc) the court must not:

- (a) order him to be disqualified, or
- (b) order any particulars or penalty points to be endorsed on the counterpart of any licence held by him or on his driving record,

if he proves that he did not know, and had no reasonable cause to suspect, that the use of the vehicle involved a danger of injury to any person.

s.48(2) - where a person is convicted of an offence under section 41A of the Road Traffic Act 1988 (breach of requirement as to brakes, steering-gear or tyres) the court must not—

- (a) order him to be disqualified, or
- (b) order any particulars or penalty points to be endorsed on the counterpart of any licence held by him or on his driving record,

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.

s.48(3) - in relation to licences which came into force before 1st June 1990, the references in subsections (1) and (2) above to the counterpart of a licence shall be construed as references to the licence itself.

### 3.7.7.4. Exceptional hardship

#### **RTOA 1988 s.35<sup>1577</sup>: Disqualification for repeated offences**

s.35(1) - where—

- (a) a person is convicted of an offence to which this subsection applies, 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.

s.35(4) - no account is to be taken under subsection (1) above of any of the following circumstances: [...]

- (b) hardship, other than exceptional hardship [...]

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<sup>1575</sup> Commencement: 15 May 1989, RTOA 1988 s.99(2).

<sup>1576</sup> Commencement: 15 May 1988, RTOA 1988 s.99(2).

<sup>1577</sup> Commencement: 15 May 1989, RTOA 1988 s.99(2).

*Note: The House of Lords considered exceptional hardship in Fay v Fay [1982] AC 835, concluding that it was not possible to produce a definition of the term and that the imprecision must have been intended by Parliament.*

### 3.7.8. Until test is passed

#### 3.7.8.1. General

##### When does the order expire?

##### ***RTOA 1988 s.36<sup>1578</sup>: Disqualification until test is passed***

- s.36(8) - subject to subsection (9) below, a disqualification by virtue of an order under this section 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 the test in question since the order was made.
- s.36(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 section.

##### Duty to endorse licence etc.

##### ***RTOA 1988 s.36<sup>1579</sup>: Disqualification until test is passed***

- s.36(10) - where there is issued to a person a licence on the counterpart of which are endorsed particulars of a disqualification under this section, 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.
- s.36(10A) - where a person's driving record is endorsed with particulars of a disqualification under this section, 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.

#### 3.7.8.2. Obligatory orders

##### Availability and duty to order

##### ***RTOA 1988 s.36<sup>1580</sup>: Disqualification until test is passed***

- s.36(1) - where this subsection applies to a person the court must order him to be disqualified until he passes the appropriate driving test.
- s.36(2) - subsection (1) above applies to a person who is disqualified under section 34 of this Act on conviction of—
- (a) manslaughter, or in Scotland culpable homicide, by the driver of a motor vehicle, or
  - (b) an offence under section 1 (causing death by dangerous driving), section 1A (causing serious injury by dangerous driving) or section 2 (dangerous driving) of the Road Traffic Act 1988.

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<sup>1578</sup> Commencement: 15 May 1989, RTOA 1988 s.99(2).

<sup>1579</sup> Commencement: 15 May 1989, RTOA 1988 s.99(2).

<sup>1580</sup> Commencement: 15 May 1989, RTOA 1988 s.99(2).



- s.36(3) - subsection (1) above also applies—
- (a) to a person who is disqualified under section 34 or 35 of this Act in such circumstances or for such period as the Secretary of State may by order prescribe, or
  - (b) to such other persons convicted of such offences involving obligatory endorsement as may be so prescribed.

**Orders made by the Secretary of State for purpose of s.36(3)**

***RTOA 1988 s.36<sup>1581</sup> : Disqualification until test is passed***

- s.36(13) - the power to make an order under subsection (3) above shall be exercisable by statutory instrument; and no such order shall be made unless a draft of it has been laid before and approved by resolution of each House of Parliament.
- s.36(14) - the Secretary of State shall not make an order under subsection (3) above after the end of 2001 if he has not previously made such an order.

**3.7.8.3. Discretionary orders**

**Power to order**

***RTOA 1988 s.36<sup>1582</sup> : Disqualification until test is passed***

- s.36(4) - where a person to whom subsection (1) above 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).

**Test to apply**

***RTOA 1988 s.36<sup>1583</sup> : Disqualification until test is passed***

- s.36(6) - in determining whether to make an order under subsection (4) above, the court shall have regard to the safety of road users.

**Restriction on making disqualification until test is passed order**

***RTOA 1988 s.36<sup>1584</sup> : Disqualification until test is passed***

- s.36(7) - where a person is disqualified until he passes the extended driving test—
- (a) any earlier order under this section shall cease to have effect, and
  - (b) a court shall not make a further order under this section while he is so disqualified.

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<sup>1581</sup> Commencement: 15 May 1989, RTOA 1988 s.99(2).

<sup>1582</sup> Commencement: 15 May 1989, RTOA 1988 s.99(2).

<sup>1583</sup> Commencement: 15 May 1989, RTOA 1988 s.99(2).

<sup>1584</sup> Commencement: 15 May 1989, RTOA 1988 s.99(2).

#### 3.7.8.4. Exemptions

##### **RTOA 1988 s.36<sup>1585</sup>: Disqualification until test is passed**

s.36(12) - this section is subject to section 48 of this Act.

##### **RTOA 1988 s.48<sup>1586</sup>: Exemption from disqualification and endorsement for certain construction and use offences**

- s.48(1) - where a person is convicted of an offence under section 40A of the Road Traffic Act 1988 (using vehicle in dangerous condition etc) the court must not:
- (a) order him to be disqualified, or
  - (b) order any particulars or penalty points to be endorsed on the counterpart of any licence held by him or on his driving record,
- if he proves that he did not know, and had no reasonable cause to suspect, that the use of the vehicle involved a danger of injury to any person.
- s.48(2) - where a person is convicted of an offence under section 41A of the Road Traffic Act 1988 (breach of requirement as to brakes, steering-gear or tyres) the court must not—
- (a) order him to be disqualified, or
  - (b) order any particulars or penalty points to be endorsed on the counterpart of any licence held by him or on his driving record,
- 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.
- s.48(3) - in relation to licences which came into force before 1st June 1990, the references in subsections (1) and (2) above to the counterpart of a licence shall be construed as references to the licence itself.

#### 3.7.8.5. Interpretation

##### **RTOA 1988 s.36<sup>1587</sup>: Disqualification until test is passed**

s.36(5) - in this section—

“*appropriate driving test*” means —

- (a) an extended driving test, where a person is convicted of an offence involving obligatory disqualification or is disqualified under section 35 of this Act,
- (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 for the purposes of this section, and

“*test of competence to drive*” means a test prescribed by virtue of section 89(3) of the Road Traffic Act 1988.

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<sup>1585</sup> Commencement: 15 May 1989, RTOA 1988 s.99(2).

<sup>1586</sup> Commencement: 15 May 1988, RTOA 1988 s.99(2).

<sup>1587</sup> Commencement: 15 May 1989, RTOA 1988 s.99(2).

s.36(11) - for the purposes of an order under this section, 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 Northern Ireland, the Isle of Man, any of the Channel Islands, another EEA State, Gibraltar or a designated country or territory, or
- (b) for the purposes of obtaining a British Forces licence (as defined by section 88(8) of the Road Traffic Act 1988);

and accordingly subsections (8) to (10) above shall apply in relation to such a test as they apply in relation to a test prescribed by virtue of section 89(3) of that Act.

s.36(11A) - for the purposes of subsection (11) above, “*designated country or territory*” means a country or territory designated by order under section 108(2) of the Road Traffic Act 1988 but a test conducted under the law of such a country or territory shall not be regarded as a corresponding test unless a person passing such a test would be entitled to an exchangeable licence as defined in section 108(1) of that Act.

### 3.7.9. Endorsement

#### 3.7.9.1. Orders for endorsement

##### Duty to endorse driving licence counterpart

###### ***RTOA 1988 s.44<sup>1588</sup>: Orders for endorsement***

- s.44(1) - where a person is convicted of an offence involving obligatory endorsement, the court must order there to be endorsed on the counterpart of 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.

##### No duty to order endorsement where special reasons exist

###### ***RTOA 1988 s.44<sup>1589</sup>: Orders for endorsement***

- s.44(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.

##### Offender does not hold a driving licence

###### ***RTOA 1988 s.44<sup>1590</sup>: Orders for endorsement***

- s.44(3A) - where a person who is not the holder of a licence is convicted of an offence involving obligatory endorsement, subsection (1) above applies as if the reference to the counterpart of any licence held by him were a reference to his driving record.

##### Offender deceived court as to circumstances etc.

###### ***RTOA 1988 s.49<sup>1591</sup>: Offender escaping consequences of endorsable offence by deception***

- s.49(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.
- s.49(2) - if—
- (a) the deception constituted or was due to an offence committed by that person, and
  - (b) he is convicted of that offence,

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<sup>1588</sup> Commencement: 15 May 1989, RTOA 1988 s.99(2).

<sup>1589</sup> Commencement: 15 May 1989, RTOA 1988 s.99(2).

<sup>1590</sup> Commencement: 15 May 1989, RTOA 1988 s.99(2).

<sup>1591</sup> Commencement: 15 May 1988, RTOA 1988 s.99(2).

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.

### 3.7.9.2. Procedure for endorsements

#### **Duty to give reasons where not disqualifying/endorsing or disqualifying for shorter than require period**

##### ***RTOA 1988 s.47<sup>1592</sup>: Supplementary provisions as to disqualifications and endorsements.***

s.47(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.

#### **Duty to send notice to Secretary of State**

##### ***RTOA 1988 s.44A<sup>1593</sup>: Endorsement of driving record in accordance with order***

s.44A(1) - where the court orders the endorsement of a person's driving record with any particulars or penalty points it must send notice of the order to the Secretary of State.

s.44A(2) - on receiving the notice, the Secretary of State must endorse those particulars or penalty points on the person's driving record.

s.44A(3) - a notice sent by the 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 require.

#### **Duty of court to send licence etc. to Secretary of State**

##### ***RTOA 1988 s.47<sup>1594</sup>: Supplementary provisions as to disqualifications and endorsements.***

s.47(2) - where a court orders the endorsement of the counterpart of any licence held by a person it may, and where a court orders the holder of a licence to be disqualified for a period of 56 days or more it must, send the licence and its counterpart, on their being produced to the court, to the Secretary of State; and if the court orders the endorsement but does not send the licence and its counterpart to the Secretary of State it must send him notice of the endorsement.

s.47(2A) - subsection (2) above is subject to section 2(2) of and paragraph 7(2) of Schedule 1 to the Road Traffic (New Drivers) Act 1995 (obligation of court to send licence and its counterpart to the Secretary of State).

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<sup>1592</sup> Commencement: 1 July 1992, as inserted by RTA 1991 Sch.4 para.97.

<sup>1593</sup> Commencement: 1 April 2009, as inserted by RSA 2006 s.9(3), RSA 2006 s.61(8) and SI 2009/3164 art.4(b).

<sup>1594</sup> Commencement: 1 July 1992, as inserted by RTA 1991 Sch.4 para.97.

- s.47(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 and the counterpart of a licence so sent in pursuance of this section must be sent to such address as the Secretary of State may determine.

### 3.7.9.3. Effect of endorsements

#### Counterparts

#### ***RTOA 1988 s.45<sup>1595</sup>: Effect of endorsement of counterparts***

- s.45(1) - an order that any particulars or penalty points are to be endorsed on the counterpart of any licence held by the person convicted shall operate as an order that the counterpart of 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 with its counterpart free from the particulars or penalty points.
- s.45(2) - on the issue of a new licence to a person, any particulars or penalty points ordered to be endorsed on the counterpart of any licence held by him shall be entered on the counterpart of the licence unless he has become entitled under subsection (4) below to have a licence issued to him with its counterpart free from those particulars or penalty points.
- s.45(4) - a person the counterpart of whose licence has been ordered to be endorsed 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 section 97(1) (grant of licences) of the Road Traffic Act 1988, surrenders any subsisting licence and its counterpart, pays the fee prescribed by regulations under Part III of that Act and satisfies the other requirements of section 97(1).
- s.45(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) an order is made for the disqualification of the offender under section 35 of this Act.
- s.45(6) - where the offence was one under section 1, 1A or 2 of the Road Traffic Act 1988 (causing death by dangerous driving, causing serious injury by dangerous driving and dangerous driving), the endorsement remains in any case effective until four years have elapsed since the conviction.
- s.45(7) - where the offence was one—
- (a) under section 3A, 4(1) or 5(1)(a) of that Act (driving offences connected with drink or drugs),

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<sup>1595</sup> Commencement: 15 May 1989, RTOA 1988 s.99(2).

- (b) under section 7(6) of that Act (failing to provide specimen) involving obligatory disqualification, or
- (c) under section 7A(6) of that Act (failing to allow a specimen to be subjected to laboratory test),

the endorsement remains effective until eleven years have elapsed since the conviction.

### Driving records

#### ***RTOA 1988 s.45A<sup>1596</sup>: Effect of endorsement of driving records***

- s.45A(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.
- s.45A(2) - at the end of the period for which the endorsement remains effective the Secretary of State must remove the endorsement from the person's driving record.
- s.45A(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 subsection (4) below to have a licence issued to him with its counterpart free from those particulars or penalty points.
- s.45A(4) - a person the counterpart of whose licence has been endorsed under subsection (3) above 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 section 97(1) of the Road Traffic Act 1988, surrenders any subsisting licence and its counterpart, pays the fee prescribed by regulations under Part 3 of that Act and satisfies the other requirements of section 97(1).
- s.45A(5) - the period for which an endorsement remains effective is determined in accordance with section 45(5) to (7) of this Act.

#### **3.7.9.4. Exemptions**

#### ***RTOA 1988 s.44<sup>1597</sup>: Orders for endorsement***

- s.44(4) - this section is subject to section 48 of this Act.

#### ***RTOA 1988 s.48<sup>1598</sup>: Exemption from disqualification and endorsement for certain construction and use offences***

- s.48(1) - where a person is convicted of an offence under section 40A of the Road Traffic Act 1988 (using vehicle in dangerous condition etc) the court must not:
  - (a) order him to be disqualified, or
  - (b) order any particulars or penalty points to be endorsed on the counterpart of any licence held by him or on his driving record,

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<sup>1596</sup> Commencement: 1 April 2009, as inserted by RSA 2006 Sch.2 para.10, SI 2008/3164 art.4(b).

<sup>1597</sup> Commencement: 15 May 1989, RTOA 1988 s.99(2).

<sup>1598</sup> Commencement: 15 May 1988, RTOA 1988 s.99(2).

if he proves that he did not know, and had no reasonable cause to suspect, that the use of the vehicle involved a danger of injury to any person.

- s.48(2) - where a person is convicted of an offence under section 41A of the Road Traffic Act 1988 (breach of requirement as to brakes, steering-gear or tyres) the court must not—
- (a) order him to be disqualified, or
  - (b) order any particulars or penalty points to be endorsed on the counterpart of any licence held by him or on his driving record,

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.

- s.48(3) - in relation to licences which came into force before 1st June 1990, the references in subsections (1) and (2) above to the counterpart of a licence shall be construed as references to the licence itself.

### 3.7.9.5. Penalty points

#### ***RTOA 1988 s.28<sup>1599</sup>: Penalty points to be attributed to an offence***

##### **Number of points attributed to an offence**

- s.28(1) - where a person is convicted of an offence involving obligatory endorsement, then, subject to the following provisions of this section, the number of penalty points to be attributed to the offence is—
- (a) the number shown in relation to the offence in the last column of Part I or Part II of Schedule 2 to this Act, or
  - (b) where a range of numbers is shown, a number within that range.

#### ***RTOA 1988 Sch.2<sup>1600</sup>: Prosecution and punishment of offences***

##### **Aiding and abetting etc.**

#### ***RTOA 1988 s.28<sup>1601</sup>: Penalty points to be attributed to an offence***

- s.28(2) - where a person is convicted of an offence committed by aiding, abetting, counselling or procuring, or inciting to the commission of, an offence involving obligatory disqualification, then, subject to the following provisions of this section, the number of penalty points to be attributed to the offence is ten.

##### **Two or more offences**

#### ***RTOA 1988 s.28<sup>1602</sup>: Penalty points to be attributed to an offence***

- s.28(4) - where a person is convicted (whether on the same occasion or not) of two or more offences committed on the same occasion and involving obligatory endorsement, the total number of penalty points to be attributed to them is the number or highest number that would be attributed on a conviction of one of them (so that if the convictions are on

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<sup>1599</sup> Commencement: 15 May 1989, RTOA 1988 s.99(2).

<sup>1600</sup> Commencement: 15 May 1989, RTOA 1988 s.99(2).

<sup>1601</sup> Commencement: 15 May 1989, RTOA 1988 s.99(2).

<sup>1602</sup> Commencement: 15 May 1989, RTOA 1988 s.99(2).



different occasions the number of penalty points to be attributed to the offences on the later occasion or occasions shall be restricted accordingly).

- s.28(5) - in a case where (apart from this subsection) subsection (4) above would apply to two or more offences, the court may if it thinks fit determine that that subsection shall not apply to the offences (or, where three or more offences are concerned, to any one or more of them).
- s.28(6) - where a court makes such a determination it shall state its reasons in open court and, if it is a magistrates' court, or in Scotland a court of summary jurisdiction, shall cause them to be entered in the register (in Scotland, record) of its proceedings.

**Power of SoS to amend number of penalty points etc.**

***RTOA 1988 s.28<sup>1603</sup>: Penalty points to be attributed to an offence***

- s.28(7) - the Secretary of State may by order made by statutory instrument—
- (a) alter a number or range of numbers shown in relation to an offence in the last column of Part I or Part II of Schedule 2 to this Act (by substituting one number or range for another, a number for a range, or a range for a number),
  - (b) where a range of numbers is shown in relation to an offence in the last column of Part I, add or delete a number together with the words “(fixed penalty)” or the words “or appropriate penalty points (fixed penalty)”,
  - (ba) substitute the words “or appropriate penalty points (fixed penalty)” for a number together with the words “(fixed penalty)”, or substitute a number together with the words “(fixed penalty)” for the words “or appropriate penalty points (fixed penalty)”, in relation to an offence in the last column of Part 1 or 2, and
  - (c) alter the number of penalty points shown in subsection (2) above;
- and an order under this subsection may provide for different numbers or ranges of numbers to be shown in relation to the same offence committed in different circumstances.
- s.28(8) - where the Secretary of State exercises his power under subsection (7) above by substituting or adding a number which appears together with the words “(fixed penalty)”, that number shall not exceed the lowest number in the range shown in the same entry.
- s.28(8A) - before making any order under subsection (3A) above the Secretary of State must consult with such representative organisations as he thinks fit.
- s.28(9) - no order shall be made under this section unless a draft of it has been laid before and approved by resolution of each House of Parliament.

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<sup>1603</sup> Commencement: 15 May 1989, RTOA 1988 s.99(2).

## Endorsement of counterparts etc. where fixed penalty issued

### ***RTOA 1988 s.28<sup>1604</sup>: Penalty points to be attributed to an offence***

- s.28(3) - for the purposes of sections 57(5), 57A(6) (endorsement of counterparts without hearings), 77(5) (endorsement of counterparts where penalty paid) and 77A(8) (endorsement of driving records where penalty paid) of this Act, the number of penalty points to be attributed to an offence is–
- (a) where both a range of numbers and a number followed by the words “(fixed penalty)” is shown in the last column of Part 1 of Schedule 2 to this Act in relation to the offence, that number,
  - (b) where a range of numbers followed by the words “or appropriate penalty points (fixed penalty)” is shown there in relation to the offence, the appropriate number of penalty points for the offence, and
  - (c) where only a range of numbers is shown there in relation to the offence, the lowest number in the range.
- s.28(3A) - for the purposes of subsection (3)(b) above the appropriate number of penalty points for an offence is such number of penalty points as the Secretary of State may by order made by statutory instrument prescribe.
- s.28(3B) - an order made under subsection (3A) above in relation to an offence may make provision for the appropriate number of penalty points for the offence to be different depending on the circumstances, including (in particular)–
- (a) the nature of the contravention or failure constituting the offence,
  - (b) how serious it is,
  - (c) the area, or sort of place, where it takes place, and
  - (d) whether the offender appears to have committed any offence or offences of a description specified in the order during a period so specified.

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<sup>1604</sup> Commencement: 15 May 1989, RTOA 1988 s.99(2).

### 3.7.10. Revocation of new drivers' licences

#### 3.7.10.1. General

*Note: This is an administrative act not an order of the court. The powers are contained in the Road Traffic (New Drivers) Act 1995 ss.1-10 and Schs.1 and 2.*

#### Persons in public service of the Crown

##### ***RT(ND)A 1995 s.8<sup>1605</sup>: The Crown***

s.8 - this Act applies to persons in the public service of the Crown.

#### Effect of disqualification until test is passed on re-testing rule

##### ***RT(ND)A 1995 Sch.1<sup>1606</sup>: Newly qualified drivers holding test certificates***

para.10 - where—

- (a) a person's test certificate has been revoked under paragraph 5 (or a person's Northern Ireland test certificate has been revoked under a provision of Northern Ireland law corresponding to paragraph 5(1) or (1ZA)) or his licence and test certificate have been revoked under paragraph 8 (or a person's Northern Ireland licence and Northern Ireland test certificate have been revoked under a provision of Northern Ireland law corresponding to paragraph 8(1) or (1ZA)); but
- (b) before he passes a relevant driving test, an order is made in relation to him under section 36 of the Road Traffic Offenders Act 1988 (disqualification until test is passed),

paragraph 6(1) or, as the case may be, paragraph 9(1) shall not apply to him.

#### Extent and commencement etc.

##### ***RT(ND)A 1995 s.10<sup>1607</sup>: Short title, commencement, extent etc.***

s.10(1) - this Act may be cited as the Road Traffic (New Drivers) Act 1995.

s.10(2) - the provisions of this Act shall come into force on such day as the Secretary of State may by order made by statutory instrument appoint and different days may be so appointed for different provisions.

s.10(3) - nothing in any provision of this Act applies to a person who becomes a qualified driver before the day on which the provision comes into force.

s.10(4) - the consequential amendments set out in Schedule 2 shall have effect.

s.10(5) - this Act does not extend to Northern Ireland.

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<sup>1605</sup> Commencement: 1 June 1997, SI 1997/267 art.2(2).

<sup>1606</sup> Commencement: Sch.1 para.11 in force on 1 March 1997, SI 1997/267 art.2(1). Otherwise in force on 1 June 1997, SI 1997/267 art.2(2).

<sup>1607</sup> Commencement: Section 10(1) and (5) in force 1 March 1997, SI 1997/267 art.2(1), otherwise in force 1 June 1997, SI 1997/267 art.2(2).

### 3.7.10.2. Probationary period for new drivers

#### What is the probationary period?

##### ***RT(ND)A 1995 s.1<sup>1608</sup>: Probationary period for newly qualified drivers***

s.1(1) - for the purposes of this Act, a person's probationary period is, subject to section 7, the period of two years beginning with the day on which he becomes a qualified driver.

#### Who is a "qualified driver"?

##### ***RT(ND)A 1995 s.1<sup>1609</sup>: Probationary period for newly qualified drivers***

s.1(2) - for the purposes of this Act, a person becomes a qualified driver on the first occasion on which he passes—

- (a) any test of competence to drive mentioned in paragraph (a) or (c) of section 89(1) of the Road Traffic Act 1988,
- (b) any test of competence to drive conducted under the law of
  - (i) another EEA State,
  - (ii) the Isle of Man,
  - (iii) any of the Channel Islands, or
  - (iv) Gibraltar.

#### Early termination of probationary period

##### ***RT(ND)A 1995 s.7<sup>1610</sup>: Early termination of probationary period***

s.7 - for the purposes of this Act a person's probationary period comes to an end if—

- (a) an order is made in relation to him under section 36 of the Road Traffic Offenders Act 1988 (order that a person be disqualified until he passes the appropriate driving test);
- (b) after his licence is revoked under section 3, he is granted a full licence following the passing of a test which is a relevant driving test for the purposes of section 4; or
- (c) after his test certificate is revoked under paragraph 5 of Schedule 1, or his licence and test certificate are revoked under paragraph 8 of that Schedule; he is granted a full licence following the passing of a test which is a relevant driving test for the purposes of paragraph 6 or 9 of that Schedule:

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<sup>1608</sup> Commencement: 1 June 1997, SI 1997/267 art.2(2).

<sup>1609</sup> Commencement: 1 June 1997, SI 1997/267 art.2(2).

<sup>1610</sup> Commencement: 1 June 1997, SI 1997/267 art.2(2).

## Interpretation

### ***RT(ND)A 1995 s.1<sup>1611</sup>: Probationary period for newly qualified drivers***

- s.1(3) - in subsection (2) “*EEA State*” means a State which is a contracting party to the EEA Agreement but until the EEA Agreement comes into force in relation to Liechtenstein does not include the State of Liechtenstein.
- s.1(4) - in subsection (3) “*EEA Agreement*” means the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as adjusted by the Protocol signed at Brussels on 17th March 1993.

### **3.7.10.3. Test certificates**

#### **General**

### ***RT(ND)A 1995 s.6<sup>1612</sup>: Newly qualified drivers holding test certificates***

- s.6 - Schedule 1 (which makes provision about newly qualified drivers who hold test certificates) shall have effect.

### ***RT(ND)A 1995 Sch.1<sup>1613</sup>: Newly qualified drivers holding test certificates***

para.11(1) - the Secretary of State may by regulations make provision for cases where, after the Secretary of State has revoked a person’s test certificate under paragraph 5, or a person’s licence and test certificate under paragraph 8, he receives notice—

- (a) that the person is appealing against a conviction or endorsement which was the basis or formed part of the basis for the revocation;
- (b) that a court has quashed a conviction which was the basis or formed part of the basis for the revocation;
- (c) that a court has quashed an endorsement which was the basis or formed part of the basis for the revocation and has not on doing so ordered that person to be disqualified;
- (d) that a court has made an order which has the effect of reducing the penalty points taken into account for the purposes of section 2 or (as the case may be) the provision of Northern Ireland law corresponding to that section to a number smaller than six.

para.11(2) - regulations under sub-paragraph (1) may in particular make provision for—

- (a) issuing licence for such period as may be prescribed;
- (b) licences issued under the regulations to be treated as revoked in such circumstances as may be prescribed;
- (c) re-issuing a test certificate which has been revoked under paragraph 5 or paragraph 8;

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<sup>1611</sup> Commencement: 1 June 1997, SI 1997/267 art.2(2).

<sup>1612</sup> Commencement: Section 6 in force 1 March 1997 to the extent that it gives effect to Sch.1 para.11, SI 1997/267 art.2(1). Otherwise in force 1 June 1997, SI 1997/267 art.2(2).

<sup>1613</sup> Commencement: Section 6 in force 1 March 1997 to the extent that it gives effect to Sch.1 para.11, SI 1997/267 art.2(1). Otherwise in force 1 June 1997, SI 1997/267 art.2(2).

- (d) suspending or terminating any prescribed conditions applied by virtue of paragraph 5(3);
- (e) requiring such courts as may be prescribed to give notice to the Secretary of State of the matters mentioned in sub-paragraph (3).

para.11(3) - the matters referred to are—

- (a) that a person whose certificate has been or is due to be revoked under paragraph 5(1) or whose licence and certificate have been or are due to be revoked under paragraph 8(1) is appealing against a conviction or endorsement which is the basis or forms part of the basis for the revocation;
- (b) that such an appeal has been abandoned.

para.11(4) - any regulations under this paragraph may—

- (a) include such incidental or supplementary provision as appears to the Secretary of State to be expedient;
- (b) make different provision for different cases

para.11(5) - any regulations under this paragraph shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### **To whom does the Schedule apply?**

##### ***RT(ND)A 1995 Sch.1<sup>1614</sup>: Newly qualified drivers holding test certificates***

para.2(1) - Part II of this Schedule applies to any person to whom Part III or IV of this Schedule applies.

para.2(2) - Part III of this Schedule applies to a person who holds—

- (a) a licence issued as a provisional licence; and
- (b) a test certificate,

para.2(3) - Part IV of this Schedule applies to a person who falls within sub-paragraph (4) or (5):

para.2(4) - a person falls within this sub-paragraph if—

- (a) he holds a licence issued as a full licence in relation to a class or certain classes of vehicles;
- (b) he is treated under section 98(2) of the Road Traffic Act 1988 as authorised by a provisional licence to drive another class or other classes of vehicles; and
- (c) he holds a test certificate which relates to that other class of vehicles or any of those other classes of vehicles.

para.2(4A) - in relation to the holder of a Northern Ireland licence, the reference in sub-paragraph (4)(b) to section 98(2) of the Road Traffic Act 1988 is a reference to the corresponding provision under the law of Northern Ireland.

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<sup>1614</sup> Commencement: Sch.1 para.11 in force on 1 March 1997, SI 1997/267 art.2(1). Otherwise in force on 1 June 1997, SI 1997/267 art.2(2).

para.2(5) - a person falls within this sub-paragraph if he holds—

- (a) a licence issued as a full licence in relation to a class or certain classes of vehicles and as a provisional licence in relation to another class or other classes of vehicles; and
- (b) a test certificate which relates to that other class of vehicles or any of those other classes of vehicles.

### **Duty to provide certificate to court**

#### ***RT(ND)A 1995 Sch.1<sup>1615</sup>: Newly qualified drivers holding test certificates***

para.3(1) - sub-paragraph (2) applies where—

- (a) a person to whom this Part of this Schedule applies is prosecuted for an offence involving obligatory endorsement; and
- (b) the time at which the offence for which he is prosecuted is alleged to have occurred is a time during his probationary period.

para.3(2) - any obligations imposed on the person under section 7 of the Road Traffic Offenders Act 1988 as respects his licence and its counterpart shall also apply as respects his test certificate.

para.3(3) - if, in a case where sub-paragraph (2) applies—

- (a) the person is convicted in the proceedings in question of an offence involving obligatory endorsement, and
- (b) he has not previously caused his test certificate to be delivered or posted it to the proper officer of the court,

he must produce his test certificate to the court.

para.3(3A) - in sub-paragraph (3) “*proper officer*” means—

- (a) in relation to a magistrates’ court in England and Wales, the designated officer for the court, and
- (b) in relation to any other court, the clerk of the court.

para.3(4) - in a case where—

- (a) the licence of a person to whom this Part of this Schedule applies has (with its counterpart) been sent to the appropriate person under section 54(7) of the Road Traffic Offenders Act 1988 or delivered to the appropriate person in response to a conditional offer issued under section 75 of that Act;
  - (b) the offence to which the fixed penalty notice or the conditional offer relates is one involving obligatory endorsement and occurring during his probationary period, and
  - (c) the person proposes to pay the fixed penalty to the appropriate person,
- the person must ensure that when the fixed penalty is paid his test certificate is sent to the appropriate person.

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<sup>1615</sup> Commencement: Sch.1 para.11 in force on 1 March 1997, SI 1997/267 art.2(1). Otherwise in force on 1 June 1997, SI 1997/267 art.2(2).

para.3(5) - a person who without reasonable excuse fails to comply with sub-paragraph (3) or (4) is guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

### **Surrender of test certificate**

#### ***RT(ND)A 1995 Sch.1<sup>1616</sup>: Newly qualified drivers holding test certificates***

para.4(1) - where the circumstances mentioned in section 2(1) exist with respect to a person to whom this Part of this Schedule applies, sub-paragraph (2) applies instead of section 2(2).

para.4(2) - the court must send to the Secretary of State—

- (a) a notice containing the particulars required to be endorsed on the counterpart of the person's licence in accordance with the order referred to in section 2(1)(d); and
- (b) on its production to the court, the person's test certificate.

para.4(3) - where—

- (a) the circumstances mentioned in section 2(3)(a) to (d) and (f) exist with respect to a person to whom this Part of this Schedule applies,
- (b) the appropriate person has received the person's test certificate in accordance with paragraph 3(4), and
- (c) the test certificate shows the date on which the person became a qualified driver, section 2(4) does not apply but if the appropriate person is the fixed penalty clerk sub-paragraph (4) applies instead.

para.4(4) - the fixed penalty clerk must send to the Secretary of State—

- (a) a notice containing the particulars endorsed on the counterpart of the person's licence; and
- (b) the person's test certificate.

### **Surrender of licence and test certificate**

#### ***RT(ND)A 1995 Sch.1<sup>1617</sup>: Newly qualified drivers holding test certificates***

para.7(1) - where the circumstances mentioned in section 2(1) exist with respect to a person to whom this Part of this Schedule applies sub-paragraph (2) applies instead of section 2(2).

para.7(2) - the court must send to the Secretary of State—

- (a) a notice containing the particulars required to be endorsed on the counterpart of the person's licence in accordance with the order referred to in section 2(1)(d),
- (b) on their production to the court, the person's licence and its counterpart; and

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<sup>1616</sup> Commencement: Sch.1 para.11 in force on 1 March 1997, SI 1997/267 art.2(1). Otherwise in force on 1 June 1997, SI 1997/267 art.2(2).

<sup>1617</sup> Commencement: Sch.1 para.11 in force on 1 March 1997, SI 1997/267 art.2(1). Otherwise in force on 1 June 1997, SI 1997/267 art.2(2).



- (c) on its production to the court, the person's test certificate.

para.7(3) - where—

- (a) the circumstances mentioned in section 2(3) exist with respect to a person to whom this Part of this Schedule applies, and
- (b) the appropriate person has received the person's test certificate in accordance with paragraph 3(4),

sub-paragraph (4) applies instead of section 2(4).

para.7(4) - the appropriate person —

- (a) may not return the person's licence and its counterpart under section 57(3) or (4) or 77(1) of the Road Traffic Offenders Act 1988; but
- (b) unless the appropriate person is the Secretary of State, must send them and the person's test certificate to the Secretary of State.

### Revocation of test certificate

#### ***RT(ND)A 1995 Sch.1<sup>1618</sup>: Newly qualified drivers holding test certificates***

para.5(1) Where the Secretary of State—

- (a) has received a notice sent to him under paragraph 4 of particulars required to be endorsed or endorsed on the counterpart of a person's licence, and
- (b) has received the person's test certificate sent to him under paragraph 4(2)(b) or (4)(b) or is satisfied that the person has been issued with a test certificate,

the Secretary of State must by notice served on that person revoke the test certificate.

para.5(1ZA) - where section 2(4) is disapplied by paragraph 4(3) and the appropriate person is the Secretary of State, the Secretary of State must by notice served on the person to whom the fixed penalty notice or conditional offer was given or issued revoke that person's test certificate.

para.5(1A) - where the Secretary of State serves on the holder of a Northern Ireland licence a notice under sub-paragraph (1) or (1ZA), the Secretary of State must send to the licensing authority in Northern Ireland particulars of the notice together with the Northern Ireland test certificate.

para.5(1B) - where the Secretary of State is sent by that licensing authority particulars of a notice served on the holder of a licence under a provision of Northern Ireland law corresponding to sub-paragraph (1) or (1ZA), he must by notice served on that person revoke his test certificate.

para.5(2) - a revocation under this paragraph shall have effect from a date specified in the notice of revocation which may not be earlier than the date of service of that notice.

para.5(3) - the effect of the revocation of a person's test certificate is that any prescribed conditions to which his provisional licence ceased to be subject when he became a qualified driver shall again apply.

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<sup>1618</sup> Commencement: Sch.1 para.11 in force on 1 March 1997, SI 1997/267 art.2(1). Otherwise in force on 1 June 1997, SI 1997/267 art.2(2).

para.5(4) - in this paragraph and paragraph 8 references to the revocation of a person's Northern Ireland test certificate are references to its revocation as respects Great Britain.

para.5(5) - the effect of the revocation of a person's Northern Ireland test certificate as respects Great Britain is that any prescribed conditions to which his Northern Ireland provisional licence ceased to be subject when he became a qualified driver shall again apply for the purposes of section 109(1) of the Road Traffic Act 1988.

### **Revocation of licence and test certificate**

#### ***RT(ND)A 1995 Sch.1<sup>1619</sup>: Newly qualified drivers holding test certificates***

para.8(1) - where the Secretary of State—

- (a) has received a notice sent to him under paragraph 7(2)(a) of particulars required to be endorsed on the counterpart of a person's licence or has received the licence and its counterpart under paragraph 7(2)(b) or (4)(b); and
- (b) has received the person's test certificate sent to him under paragraph 7(2)(b) or (4)(b) or is satisfied that the person has been issued with a test certificate,

the Secretary of State must by notice served on that person revoke the licence and the test certificate.

para.8(1ZA) - where paragraph 7(4) applies and the appropriate person is the Secretary of State, the Secretary of State must by notice served on the person to whom the fixed penalty notice or conditional offer was given or issued revoke that person's licence and test certificate.

para.8(1A) - where the Secretary of State serves on the holder of a Northern Ireland licence a notice under sub-paragraph (1) or (1ZA), the Secretary of State must send to the licensing authority in Northern Ireland particulars of the notice together with the Northern Ireland licence and the Northern Ireland test certificate.

para.8(1B) - where the Secretary of State is sent by that licensing authority particulars of a notice served on the holder of a licence under a provision of Northern Ireland law corresponding to sub-paragraph (1) or (1ZA), he must by notice served on that person revoke his licence and test certificate.

para.8(2) - a revocation under this paragraph shall have effect from a date specified in the notice of revocation which may not be earlier than the date of service of that notice.

para.8(3) - in this paragraph references to the revocation of a person's Northern Ireland licence are references to its revocation as respects Great Britain; and, accordingly, the person ceases to be authorised by virtue of section 109(1) of the Road Traffic Act 1988 to drive in Great Britain a motor vehicle of any class.

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<sup>1619</sup> Commencement: Sch.1 para.11 in force on 1 March 1997, SI 1997/267 art.2(1). Otherwise in force on 1 June 1997, SI 1997/267 art.2(2).

#### 3.7.10.4. Licences

##### Surrender of licences

##### ***RT(ND)A 1995 s.2<sup>1620</sup>: Surrender of licences***

- s.2(1) - subsection (2) applies where—
- (a) a person is the holder of a licence;
  - (b) he is convicted of an offence involving obligatory endorsement;
  - (c) the penalty points to be taken into account under section 29 of the Road Traffic Offenders Act 1988 on that occasion number six or more.
  - (d) the court makes an order falling within section 44(1)(b) of that Act in respect of the offence:
  - (e) the person's licence shows the date on which he became a qualified driver, or that date has been shown by other evidence in the proceedings, and
  - (f) it appears to the court, in the light of the order and the date so shown, that the offence was committed during the person's probationary period.
- s.2(2) - where this subsection applies, the court must send to the Secretary of State—
- (a) a notice containing the particulars required to be endorsed on the counterpart of the person's licence in accordance with the order referred to in subsection (1)(d); and
  - (b) on their production to the court, the person's licence and its counterpart.
- s.2(3) - subsection (4) applies where—
- (a) a person's licence and its counterpart have been sent to the fixed penalty clerk under section 54(7) of the Road Traffic Offenders Act 1988, retained by a vehicle examiner under that section or delivered to the appropriate person in response to a conditional offer issued under section 75 of that Act;
  - (b) the offence to which the fixed penalty notice or the conditional offer relates is one involving obligatory endorsement;
  - (c) the appropriate person endorses the number of penalty points to be attributed to the offence on the counterpart of the licence;
  - (d) the penalty points to be taken into account by the appropriate person in respect of the offence number six or more;
  - (e) the licence shows the date on which the person became a qualified driver; and
  - (f) it appears to the appropriate person, in the light of the particulars of the offence endorsed on the counterpart of the licence and the date so shown, that the offence was committed during the person's probationary period.
- s.2(4) - where this subsection applies —
- (a) the appropriate person may not return the licence and its counterpart under section 57(3) or (4) or 77(1) of the Road Traffic Offenders Act 1988; but
  - (b) unless the appropriate person is the Secretary of State, he must send them to the Secretary of State.

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<sup>1620</sup> Commencement: 1 June 1997, SI 1997/267 art.2(2).

- s.2(5) - for the purposes of subsection (3)(d) the penalty points to be taken into account in respect of the offence are the penalty points which would have been taken into account under section 29 of the Road Traffic Offenders Act 1988 if—
- (a) the person in question had been convicted of the offence; and
  - (b) the number of penalty points to be attributed to the offence on that occasion had been determined in accordance with section 28(3) of that Act.

### **Surrender of licence and test certificate**

#### ***RT(ND)A 1995 Sch.1<sup>1621</sup>: Newly qualified drivers holding test certificates***

para.7(1) - where the circumstances mentioned in section 2(1) exist with respect to a person to whom this Part of this Schedule applies sub-paragraph (2) applies instead of section 2(2).

para.7(2) - the court must send to the Secretary of State—

- (a) a notice containing the particulars required to be endorsed on the counterpart of the person's licence in accordance with the order referred to in section 2(1)(d),
- (b) on their production to the court, the person's licence and its counterpart; and
- (c) on its production to the court, the person's test certificate.

para.7(3) - where—

- (a) the circumstances mentioned in section 2(3) exist with respect to a person to whom this Part of this Schedule applies, and
- (b) the appropriate person has received the person's test certificate in accordance with paragraph 3(4),

sub-paragraph (4) applies instead of section 2(4).

para.7(4) - the appropriate person —

- (a) may not return the person's licence and its counterpart under section 57(3) or (4) or 77(1) of the Road Traffic Offenders Act 1988; but
- (b) unless the appropriate person is the Secretary of State, must send them and the person's test certificate to the Secretary of State.

### **Revocation of licences**

#### ***RT(ND)A 1995 s.3<sup>1622</sup>: Revocation of licences***

s.3(1) - where the Secretary of State receives—

- (a) a notice sent to him under section 2(2)(a) of particulars required to be endorsed on the counterpart of a person's licence, or
- (b) a person's licence and its counterpart sent to him in accordance with section 2(2)(b) or (4)(b),

the Secretary of State must by notice served on that person revoke the licence.

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<sup>1621</sup> Commencement: Sch.1 para.11 in force on 1 March 1997, SI 1997/267 art.2(1). Otherwise in force on 1 June 1997, SI 1997/267 art.2(2).

<sup>1622</sup> Commencement: 1 June 1997, SI 1997/267 art.2(2).

- s.3(1ZA) - where section 2(4)(a) applies but the appropriate person is the Secretary of State, the Secretary of State must by notice served on the person to whom the fixed penalty notice or conditional offer was given or issued, revoke that person's licence.
- s.3(1A) - where the Secretary of State serves on the holder of a Northern Ireland licence a notice under subsection (1) or (1ZA), the Secretary of State must send to the licensing authority in Northern Ireland—
- (a) particulars of the notice; and
  - (b) the Northern Ireland licence.
- s.3(1B) - where the Secretary of State is sent by that licensing authority particulars of a notice served on the holder of a licence under a provision of Northern Ireland law corresponding to subsection (1) or (1ZA), he must by notice served on the holder revoke the licence.
- s.3(2) - a revocation under this section shall have effect from a date specified in the notice of revocation which may not be earlier than the date of service of that notice.
- s.3(3) - in this section references to the revocation of a person's Northern Ireland licence are references to its revocation as respects Great Britain; and, accordingly, the person ceases to be authorised by virtue of section 109(1) of the Road Traffic Act 1988 to drive in Great Britain a motor vehicle of any class.

#### Revocation of licence and test certificate

##### ***RT(ND)A 1995 Sch.1<sup>1623</sup>: Newly qualified drivers holding test certificates***

para.8(1) - where the Secretary of State—

- (a) has received a notice sent to him under paragraph 7(2)(a) of particulars required to be endorsed on the counterpart of a person's licence or has received the licence and its counterpart under paragraph 7(2)(b) or (4)(b); and
- (b) has received the person's test certificate sent to him under paragraph 7(2)(b) or (4)(b) or is satisfied that the person has been issued with a test certificate,

the Secretary of State must by notice served on that person revoke the licence and the test certificate.

para.8(1ZA) - where paragraph 7(4) applies and the appropriate person is the Secretary of State, the Secretary of State must by notice served on the person to whom the fixed penalty notice or conditional offer was given or issued revoke that person's licence and test certificate.

para.8(1A) - where the Secretary of State serves on the holder of a Northern Ireland licence a notice under sub-paragraph (1) or (1ZA), the Secretary of State must send to the licensing authority in Northern Ireland particulars of the notice together with the Northern Ireland licence and the Northern Ireland test certificate.

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<sup>1623</sup> Commencement: Sch.1 para.11 in force on 1 March 1997, SI 1997/267 art.2(1). Otherwise in force on 1 June 1997, SI 1997/267 art.2(2).

- para.8(1B) - where the Secretary of State is sent by that licensing authority particulars of a notice served on the holder of a licence under a provision of Northern Ireland law corresponding to sub-paragraph (1) or (1ZA), he must by notice served on that person revoke his licence and test certificate.
- para.8(2) - a revocation under this paragraph shall have effect from a date specified in the notice of revocation which may not be earlier than the date of service of that notice.
- para.8(3) - in this paragraph references to the revocation of a person's Northern Ireland licence are references to its revocation as respects Great Britain; and, accordingly, the person ceases to be authorised by virtue of section 109(1) of the Road Traffic Act 1988 to drive in Great Britain a motor vehicle of any class.

### 3.7.10.5. Re-tests

#### Driver must sit re-test

#### ***RT(ND)A 1995 s.4<sup>1624</sup>: Retesting***

- s.4(1) - subject to subsection (5) and section 5, the Secretary of State may not under Part III of the Road Traffic Act 1988 grant a person whose licence has been revoked under section 3 a full licence to drive any class of vehicles in relation to which the revoked licence was issued as a full licence or (as the case may be) full Northern Ireland licence unless he satisfies the Secretary of State that within the relevant period he has passed a relevant driving test.
- s.4(2) - in this section "*relevant driving test*" means, in relation to a person whose licence has been revoked, any test which—
- (a) falls within paragraph (a) or (b) of section 1(2) and
  - (b) is a test of competence to drive any vehicle included in any class of vehicles in relation to which the revoked licence was issued as a full licence or (as the case may be) full Northern Ireland licence.
- s.4(3) - if the Secretary of State grants a full licence to a person who is required to pass a relevant driving test in order to be granted that licence, the licence granted must (subject to section 92 and Part IV of the Road Traffic Act 1988 ) be one authorising that person to drive all the classes of vehicles in relation to which the revoked licence was issued as a full licence or (as the case may be) full Northern Ireland licence. s.4(4) - in subsection (1) "*the relevant period*" means the period beginning—
- (a) after the date of the revocation of the licence, and
  - (b) not more than two years before the date on which the application for the full licence is made.
- s.4(5) - subsections (1) and (1A) do not apply to a person whose licence has been revoked under section 3 or whose Northern Ireland licence has been revoked under a provision of Northern Ireland law corresponding to section 3(1) if, before he passes a relevant driving test, an order is made in relation to him under section 36 of the Road Traffic Offenders Act 1988 (disqualification until test is passed).

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<sup>1624</sup> Commencement: 1 June 1997, SI 1997/267 art.2(2).

### Newly qualified driver with provisional licence

#### ***RT(ND)A 1995 Sch.1<sup>1625</sup>: Newly qualified drivers holding test certificates***

para.6(1) - subject to Part V of this Schedule, the Secretary of State may not under Part III of the Road Traffic Act 1988 grant a person whose test certificate has been revoked under paragraph 5, or whose Northern Ireland test certificate has been revoked under a provision of Northern Ireland law corresponding to paragraph 5(1) or (1ZA), a full licence to drive any class of vehicles that, immediately before his test certificate was revoked, he was permitted to drive without observing prescribed conditions, unless he satisfies the Secretary of State that within the relevant period he has passed a relevant driving test.

para.6(2) - in this paragraph “*relevant driving test*” means, in relation to a person whose test certificate has been revoked, any test which:

- (a) falls within paragraph (a) or (b) of section 1(2); and
- (b) is a test of competence to drive any vehicle included in any class of vehicles that, immediately before his test certificate was revoked, he was permitted to drive without observing prescribed conditions.

para.6(3) - if the Secretary of State grants a full licence to a person who is required to pass a relevant driving test in order to be granted that licence, the licence granted must (subject to section 92 and Part IV of the Road Traffic Act 1988) be one authorising that person to drive all the classes of vehicles that, immediately before his test certificate was revoked, he was permitted to drive without observing prescribed conditions.

para.6(4) - in sub-paragraph (1) “*the relevant period*” means the period beginning—

- (a) after the date of the revocation of the test certificate; and
- (b) not more than two years before the date on which the application for the full licence is made.

### Newly qualified driver with full and provisional entitlements

#### ***RT(ND)A 1995 Sch.1<sup>1626</sup>: Newly qualified drivers holding test certificates***

para.9(1) - subject to Part V of this Schedule, the Secretary of State may not under Part III of the Road Traffic Act 1988 grant a person whose licence and test certificate have been revoked under paragraph 8, or whose Northern Ireland licence and Northern Ireland test certificate have been revoked under a provision of Northern Ireland law corresponding to paragraph 8(1) or (1ZA), a full licence to drive any class of vehicles mentioned in sub-paragraph (4); unless he satisfies the Secretary of State that within the relevant period he has passed a relevant driving test.

para.9(2) - in this paragraph “*relevant driving test*” means any test which—

- (a) falls within paragraph (a) or (b) of section 1(2); and
- (b) is a test of competence to drive any vehicle included in any class of vehicles mentioned in sub-paragraph (4).

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<sup>1625</sup> Commencement: Sch.1 para.11 in force on 1 March 1997, SI 1997/267 art.2(1). Otherwise in force on 1 June 1997, SI 1997/267 art.2(2).

<sup>1626</sup> Commencement: Sch.1 para.11 in force on 1 March 1997, SI 1997/267 art.2(1). Otherwise in force on 1 June 1997, SI 1997/267 art.2(2).

para.9(3) - if the Secretary of State grants a full licence to a person who is required to pass a relevant driving test in order to be granted that licence, the licence granted must (subject to section 92 and Part IV of the Road Traffic Act 1988) be one authorising that person to drive all the classes of vehicles mentioned in sub-paragraph (4),

para.9(4) - the classes of vehicles are—

- (a) any class of vehicles in relation to which the revoked licence was issued as a full licence; and
- (b) any class of vehicles—
  - (i) that he was treated under section 98(2) of the Road Traffic Act 1988, or under a provision of Northern Ireland law corresponding to that section, as authorised to drive under a provisional licence, or
  - (ii) in relation to which the revoked licence was issued as a provisional licence, and that, immediately before the test certificate was revoked, he was permitted to drive without observing prescribed conditions.

para.9(5) - in sub-paragraph (1) “*the relevant period*” means the period beginning—

- (a) after the date of the revocation of the licence and the test certificate; and
- (b) not more than two years before the date on which the application for the full licence is made.

## Northern Ireland

### ***RT(ND)A 1995 s.4<sup>1627</sup>: Retesting***

s.4(1A) - subject to subsection (5), the Secretary of State may not under that Part grant a person whose Northern Ireland licence has been revoked under a provision of Northern Ireland law corresponding to section 3(1) a full licence to drive any class of vehicles in relation to which the revoked licence was issued as a full Northern Ireland licence unless he satisfies the Secretary of State as mentioned in subsection (1).

### **3.7.10.6. Appeals: Restoration of licence without re-testing**

### ***RT(ND)A 1995 s.5<sup>1628</sup>: Restoration of licence without retesting in certain cases***

s.5(1) - if the Secretary of State receives notice that a person whose licence has been revoked under section 3 is appealing against a conviction or endorsement which was the basis or formed part of the basis for the revocation, he must grant that person free of charge a full licence for a period prescribed by regulations.

s.5(2) - regulations under subsection (1) may in particular prescribe—

- (a) a period expiring when the appeal is finally determined or abandoned; or
- (b) a period expiring on the date on which the revoked licence would have expired if it had not been revoked.

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<sup>1627</sup> Commencement: 1 June 1997, SI 1997/267 art.2(2).

<sup>1628</sup> Commencement: Section 5(1) and (2) and (8)-(10) in force 1 March 1997, SI 1997/267 art.2(1). Section 5(3)-(7) and (11) in force 1 June 1997, SI 1997/267 art.2(2).



- s.5(3) - if the regulations prescribe a period other than that mentioned in subsection (2)(a), a licence granted under subsection (1) shall be treated as revoked if—
- (a) following the appeal, the penalty points taken into account for the purposes of section 2 or (as the case may be) the provision of Northern Ireland law corresponding to that section are not reduced to a number smaller than six: or
  - (b) the appeal is abandoned.
- s.5(4) - if, in the case of a person whose licence has been revoked under section 3, the Secretary of State receives notice that a court—
- (a) has quashed a conviction which was the basis or formed part of the basis for the revocation of the licence,
  - (b) has quashed an endorsement which was the basis or formed part of the basis for the revocation of the licence and has not on doing so ordered him to be disqualified, or
  - (c) has made an order which has the effect of reducing the penalty points taken into account for the purposes of section 2 or (as the case may be) the provision of Northern Ireland law corresponding to that section to a number smaller than six,
- then, subject to subsection (5), the Secretary of State must grant that person free of charge a full licence for a period expiring on the date on which the revoked licence would have expired if it had not been revoked.
- s.5(5) - subsection (4) does not require the Secretary of State to grant a licence to a person who has been granted a previous licence which has not been surrendered unless that person provides the Secretary of State with an explanation for not surrendering the previous licence that the Secretary of State considers adequate.
- s.5(6) - if, in accordance with subsection (1) or (4), the Secretary of State grants a full licence to a person whose licence has been revoked under section 3, the licence granted must be one authorising that person to drive all the classes of vehicles in relation to which the revoked licence was issued as a full licence.
- s.5(7) - any licence granted in accordance with subsection (1) or (4) shall have effect for the purposes of the Road Traffic Acts as if it were a licence granted under Part III of the Road Traffic Act 1988.
- s.5(8) - regulations may make provision for requiring such courts as may be prescribed to give notice to the Secretary of State—
- (a) that a person whose licence has been or is due to be revoked under section 3(1) is appealing against a conviction or endorsement which is the basis or forms part of the basis for the revocation;
  - (b) that such an appeal has been abandoned.
- s.5(9) - regulations under this section may—
- (a) include such incidental or supplementary provision as appears to the Secretary of State to be expedient;
  - (b) make different provision for different cases.
- s.5(10) - any regulations made under this section shall be made by the Secretary of State by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- s.5(11) - nothing in this section applies in relation to a person whose Northern Ireland licence has been revoked under section 3(1).

### 3.7.10.7. Interpretation

#### **RT(ND)A 1995 s.2<sup>1629</sup>: Surrender of licences**

- s.2(6) - in this section and section 3 “*licence*” includes a Northern Ireland licence.
- s.2(7) - in this section and section 3–
- “*the appropriate person*”, in relation to a fixed penalty notice, means–
- (a) if it was given by a constable or an authorised person, the fixed penalty clerk, and
  - (b) if it was given by a vehicle examiner or the Secretary of State, the Secretary of State, and
- “*the appropriate person*”, in relation to a conditional offer, means–
- (a) where the conditional offer was issued under subsection (1), (2) or (3) of section 75 of the Road Traffic Offenders Act 1988, the fixed penalty clerk, and
  - (b) where it was issued under subsection (1A) or (3B) of that section, the Secretary of State.

#### **RT(ND)A 1995 s.9<sup>1630</sup>: Interpretation etc.**

- s.9(1) - expressions used in this Act which are also used in Part III of the Road Traffic Act 1988 shall be construed in the same way as in that Act.
- s.9(2) - expressions used in this Act which are also used in the Road Traffic Offenders Act 1988 shall be construed in the same way as in that Act.
- s.9(2A) - in this Act–
- “*full Northern Ireland licence*” means a Northern Ireland licence other than a Northern Ireland provisional licence,
- “*Northern Ireland provisional licence*” means a Northern Ireland licence which corresponds to a provisional licence.
- s.9(3) - in this Act “*notice*” means notice in writing.
- s.9(4) - Section 107 of the Road Traffic Act 1988 (service of notices) applies to a notice served under section 3 or paragraph 5 or 8 of Schedule 1 as it applies to a notice served under Part III or IV of that Act.
- s.9(5) - any requirement under any provision of this Act that a licence and its counterpart, a test certificate or a notice must be sent to the Secretary of State is a requirement that the licence and its counterpart, the test certificate or the notice must be sent to the Secretary of State at such address as the Secretary of State may determine.

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<sup>1629</sup> Commencement: 1 June 1997, SI 1997/267 art.2(2).

<sup>1630</sup> Commencement: 1 June 1997, SI 1997/267 art.2(2).

**RT(ND)A 1995 Sch.1<sup>1631</sup>: Newly qualified drivers holding test certificates**

- para.1(1) - in this Schedule “*test certificate*” means a certificate or other document which by virtue of regulations under section 89 of the Road Traffic Act 1988 is evidence that a person has not more than two years previously passed a test of competence to drive prescribed by virtue of such regulations.
- para.1(2) - in this Schedule “*prescribed conditions*” means the prescribed conditions referred to in section 97(3) of the 1988 Act (subject to which provisional licences are granted).
- para.1(2A) - in this Schedule “*the appropriate person*” has the same meaning as in sections 2 and 3 of this Act.
- para.1(3) - in this Schedule “*licence*” includes a Northern Ireland licence, “*full licence*” includes a full Northern Ireland licence and “*provisional licence*” includes a Northern Ireland provisional licence.
- para.1(4) - in relation to the holder of a Northern Ireland licence, the following sub-paragraphs have effect for the purposes of this Schedule.
- para.1(5) - references to a test certificate are references to a certificate or other document (in this Schedule referred to as a “*Northern Ireland test certificate*”) which is evidence that he has not more than two years previously passed a Northern Ireland test of competence to drive corresponding to the test mentioned in sub-paragraph (1).
- para.1(6) - references to prescribed conditions are references to conditions subject to which the Northern Ireland provisional licence was granted.

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<sup>1631</sup> Commencement: Sch.1 para.11 in force on 1 March 1997, SI 1997/267 art.2(1). Otherwise in force on 1 June 1997, SI 1997/267 art.2(2).

### 3.7.11. Special reasons

#### No duty to order endorsement/disqualification where special reasons exist

##### **RTOA 1988 s.34<sup>1632</sup>: Disqualification for certain offences**

s.34(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.

##### **RTOA 1988 s.44<sup>1633</sup>: Orders for endorsement**

s.44(1) - Where a person is convicted of an offence involving obligatory endorsement, the court must order there to be endorsed on the counterpart of 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.

s.44(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.

#### Test to apply

##### **R. v Wickins (1958) 42 Cr. App. R. 236**

...the most important of the other cases to which the learned Recorder referred is *Whittall v Kirby* [1947] K.B. 194... “A ‘special reason’ within the exception is one which is special to the facts of the particular case, that is, in other words, a mitigating or extenuating circumstance, not amounting in law to a defence to the charge, yet directly connected with the commission of the offence, and one which the court ought properly to take into consideration when imposing punishment.”

If one takes the essence of that definition, there are four conditions there laid down which have to be satisfied.

The first is that it must be a mitigating or an extenuating circumstance...

The next is that it must not amount in law to a defence to the charge...

The third is that it must be directly connected with the commission of the offence...

The fourth is that the matter is one which the court ought properly to take into consideration when imposing punishment. (Devlin J, at pp.239-240)

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<sup>1632</sup> Commencement: 15 May 1988, RTOA 1988 s.99(2).

<sup>1633</sup> Commencement: 15 May 1989, RTOA 1988 s.99(2).

### 3.7.12. Interaction of driving disqualifications with other sentencing orders

#### Absolute and conditional discharge

##### ***PCC(S)A 2000 s.12<sup>1634</sup>: Absolute and conditional discharge***

s.12(7) - nothing prevents a court from imposing in addition to a discharge: any disqualification

##### ***RTOA 1988 s.46<sup>1635</sup>: Combination of disqualification and endorsement with probation orders and orders for discharge***

s.46(1) - notwithstanding anything in PCC(S)A 2000 s.14(3) (conviction of defendant 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: (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 RTOA 1988 ss.34 (disqualification), 35 (disqualification for repeated offences), 36 (disqualification until test is passed), 44 (endorsement) or 44A (endorsement in accordance with order)

s.46(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 the counterpart of any licence held by him or on his driving record,

is to be taken into account, notwithstanding anything in section 14(1) of the Powers of Criminal Courts (Sentencing) Act 2000 (conviction of offender 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.

s.46(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 246(2) or (3) (absolute discharge) of the Criminal Procedure (Scotland) Act 1995,

then, for the purposes of sections 34, 35, 36, 44, 45 and 45A of this Act, he shall be treated as if he had been convicted of an offence of the kind in question and section 247 of that Act shall not apply.

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<sup>1634</sup> Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

<sup>1635</sup> Commencement: 15 May 1989, RTOA 1988 s.99(2)

## Fixed penalties

### ***RTOA 1988 s.30<sup>1636</sup>: Penalty points: modification where fixed penalty also in question***

- s.30(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 endorsement, and
  - (b) the court is satisfied that the counterpart of his licence or his driving record has been or is liable to be endorsed under section 57, 57A, 77 or 77A 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.
- s.30(2) - 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 of this Act apart from this section, less
  - (b) the number of penalty points required to be endorsed on the counterpart of his licence or on his driving record under section 57, 57A, 77 or 77A of this Act in respect of the connected offence (except so far as they have already been deducted by virtue of this paragraph).

## Totting up and disqualification until test is passed

### ***Magistrates’ Courts Sentencing Guidelines, Sentencing Guidelines Council p.185***

15. An offender disqualified as a ‘totter’ under the penalty points provisions may also be ordered to retake a driving test; in this case, the extended test applies.

## Discretionary disqualification and totting up

### ***Magistrates’ Courts Sentencing Guidelines, Sentencing Guidelines Council p.185***

12. In some cases in which the court is considering discretionary disqualification, the offender may already have sufficient penalty points on his or her licence that he or she would be liable to a ‘totting up’ disqualification if further points were imposed. In these circumstances, the court should impose penalty points rather than discretionary disqualification so that the minimum totting up disqualification period applies [...]

## Disqualification until test is passed and revocation of new drivers’ licences

### ***RT(ND)A 1995 Sch.1<sup>1637</sup>: Newly qualified drivers holding test certificates***

- para.10 - where—
- (a) a person’s test certificate has been revoked under paragraph 5 (or a person’s Northern Ireland test certificate has been revoked under a provision of Northern Ireland law corresponding to paragraph 5(1) or (1ZA)) or his licence and test certificate have been revoked under paragraph 8 (or a person’s Northern Ireland

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<sup>1636</sup> Commencement: In force in England and Wales on 15 May 1989, RTOA 1988 s.99(2). For Scotland, see s.99(3) and (4).

<sup>1637</sup> Commencement: Sch.1 para.11 in force on 1 March 1997, SI 1997/267 art.2(1). Otherwise in force on 1 June 1997, SI 1997/267 art.2(2).

licence and Northern Ireland test certificate have been revoked under a provision of Northern Ireland law corresponding to paragraph 8(1) or (1ZA)); but

- (b) before he passes a relevant driving test, an order is made in relation to him under section 36 of the Road Traffic Offenders Act 1988 (disqualification until test is passed),

paragraph 6(1) or, as the case may be, paragraph 9(1) shall not apply to him.

### **Endorsement and obligatory disqualification**

#### **R. v Kent [1983] 1 W.L.R. 794; (1983) 77 Cr. App. R. 120**

If a court imposes a sentence of disqualification from driving, it cannot order penalty points to be endorsed.

*Note: See also the decision in R. v Usaceva [2015] EWCA Crim 166 which held that the decision in R. v Kent [1983] 1 W.L.R. 794; (1983) 77 Cr. App. R. 120; (1983) 5 Cr. App. R. (S.) 171, decided under the Road Traffic Act 1972 then in force, to the effect that, if a court imposed an obligatory sentence of disqualification from driving, it could not also order penalty points to be endorsed on an offender's licence, would apply to the currently in force Road Traffic Offenders Act 1988*

### 3.7.13. Effect of disqualification order

#### When is the offender's licence revoked?

##### ***RTOA 1988 s.37<sup>1638</sup>: Effect of order of disqualification***

s.37(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.

#### Short or interim disqualification

##### ***RTOA 1988 s.37<sup>1639</sup>: Effect of order of disqualification***

s.37(1A) - 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 section 26 of this Act,

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

#### Appeals

##### ***RTOA 1988 s.37<sup>1640</sup>: Effect of order of disqualification***

s.37(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.

#### Disqualification until test is passed

##### ***RTOA 1988 s.37<sup>1641</sup>: Effect of order of disqualification***

s.37(3) - notwithstanding anything in Part III of the Road Traffic Act 1988, a person disqualified by an order of a court under section 36 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.

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<sup>1638</sup> Commencement: 15 May 1989, RTOA 1988 s.99(2)

<sup>1639</sup> Commencement: 15 May 1989, RTOA 1988 s.99(2)

<sup>1640</sup> Commencement: 15 May 1989, RTOA 1988 s.99(2)

<sup>1641</sup> Commencement: 15 May 1989, RTOA 1988 s.99(2)



### 3.7.14. Appeals

#### Appeal disqualification in same manner as conviction

##### ***RTOA 1988 s.38<sup>1642</sup>: Appeals against disqualification***

- s.38(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.
- s.38(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.

#### Power to suspend disqualification pending appeal

##### ***RTOA 1988 s.39<sup>1643</sup>: Suspension of disqualification pending appeal***

- s.39(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.
- s.39(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.
- s.39(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.
- s.39(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.

#### Appellate courts

##### ***RTOA 1988 s.40<sup>1644</sup>: Power of appellate courts in England and Wales to suspend disqualification***

- s.40(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.
- s.40(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,

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<sup>1642</sup> Commencement: 15 May 1989, RTOA 1988 s.99(2)

<sup>1643</sup> Commencement: 15 May 1989, RTOA 1988 s.99(2)

<sup>1644</sup> Commencement: 15 May 1989, RTOA 1988 s.99(2)

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.

- s.40(3) - where a person ordered to be disqualified has appealed or applied for leave to appeal to the Supreme Court—
- (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.
- s.40(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 Senior Courts Act 1981 (statement of case by Crown Court) the High Court may, if it thinks fit, suspend the disqualification.
- s.40(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.
- s.40(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.
- s.40(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.
- s.40(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.

**Suspension pending determination of application regarding completion of courses for reduced disqualification period**

***RTOA 1988 s.41A<sup>1645</sup>: Suspension of disqualification pending determination of applications under section 34B***

- s.41A(1) - where a person makes an application to a court under section 34B (certificates of completion of courses) of this Act, the court may suspend the disqualification to which the application relates pending the determination of the application.
- s.41A(2) - where a court exercises its power under subsection (1) above it must send notice of the suspension to the Secretary of State.

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<sup>1645</sup> Commencement: 1 July 1992, as inserted by RTA 1991 Sch.4 para.97.

s.41A(3) - the notice must be sent in such manner and to such address, and must contain such particulars, as the Secretary of State may determine.

### **Suspension period does not count towards total period of disqualification**

#### ***RTOA 1988 s.43<sup>1646</sup>: Rule for determining end of period of disqualification***

s.43 - 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.

### **Appeals: Duty to send notice to Secretary of State**

#### ***RTOA 1988 s.47<sup>1647</sup>: Supplementary provisions as to disqualifications and endorsements.***

s.47(3) - where on an appeal against an order for the endorsement of a licence or a driving record or the disqualification of a person the appeal is allowed, the court by which the appeal is allowed must send notice of that fact to the Secretary of State.

s.47(3A) - on receiving such a notice in relation to a person who is not the holder of a licence, the Secretary of State must make any necessary adjustments to the endorsements on the person's driving record to reflect the outcome of the appeal.

s.47(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 and the counterpart of a licence so sent in pursuance of this section must be sent to such address as the Secretary of State may determine.

### **3.7.15. Removal of disqualification**

#### **Availability**

#### ***RTOA 1988 s.42<sup>1648</sup>: Removal of disqualification***

s.42(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.

s.42(6) - the preceding provisions of this section shall not apply where the disqualification was imposed by order under section 36(1) (disqualification until test is passed) of this Act.

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<sup>1646</sup> Commencement: 1 July 1992, as inserted by RTA 1991 Sch.4 para.97.

<sup>1647</sup> Commencement: 1 July 1992, as inserted by RTA 1991 Sch.4 para.97.

<sup>1648</sup> Commencement: 1 July 1992, as inserted by RTA 1991 Sch.4 para.97.

## Test to apply

### ***RTOA 1988 s.42<sup>1649</sup>: Removal of disqualification***

- s.42(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.

## When can an offender apply?

### ***RTOA 1988 s.42<sup>1650</sup>: Removal of disqualification***

- s.42(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.

## Application refused: No new application for 3 months

### ***RTOA 1988 s.42<sup>1651</sup>: Removal of disqualification***

- s.42(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.

## Duty of the court where removing disqualification

### ***RTOA 1988 s.42<sup>1652</sup>: Removal of disqualification***

- s.42(5) - if under this section a court orders a disqualification to be removed, the court—
- (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

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<sup>1649</sup> Commencement: 1 July 1992, as inserted by RTA 1991 Sch.4 para.97.

<sup>1650</sup> Commencement: 1 July 1992, as inserted by RTA 1991 Sch.4 para.97.

<sup>1651</sup> Commencement: 1 July 1992, as inserted by RTA 1991 Sch.4 para.97.

<sup>1652</sup> Commencement: 1 July 1992, as inserted by RTA 1991 Sch.4 para.97.

- (ii) if particulars of the disqualification were previously endorsed on the driving record of the applicant, send notice of the order to the Secretary of State, and
- (b) may in any case order the applicant to pay the whole or any part of the costs of the application.

s.42(5A) - subsection (5)(a)(i) above 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 section to the Secretary of State.

s.42(5B) - a notice under subsection (5)(a)(ii) or (5A) above must be sent in such manner and to such address, and must contain such particulars, as the Secretary of State may determine.

### **Duty to remove endorsement where disqualification removed**

#### ***RTOA 1988 s.42<sup>1653</sup>: Removal of disqualification***

s.42(5AA) - if the disqualification was imposed in respect of an offence involving obligatory endorsement, the Secretary of State must, on receiving notice of an order under subsection (5)(a)(ii) above, make any necessary adjustments to the endorsements on the person's driving record to reflect the order.

### **Duty to give reasons where not disqualifying/endorsing or disqualifying for shorter than require period**

#### ***RTOA 1988 s.47<sup>1654</sup>: Supplementary provisions as to disqualifications and endorsements.***

s.47(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.

### **Duty of court to send licence etc. to Secretary of State**

#### ***RTOA 1988 s.47<sup>1655</sup>: Supplementary provisions as to disqualifications and endorsements.***

s.47(2) - where a court orders the endorsement of the counterpart of any licence held by a person it may, and where a court orders the holder of a licence to be disqualified for a period of 56 days or more it must, send the licence and its counterpart, on their being produced to the court, to the Secretary of State; and if the court orders the endorsement but does not send the licence and its counterpart to the Secretary of State it must send him notice of the endorsement.

s.47(2A) - subsection (2) above is subject to section 2(2) of and paragraph 7(2) of Schedule 1 to the Road Traffic (New Drivers) Act 1995 (obligation of court to send licence and its counterpart to the Secretary of State).

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<sup>1653</sup> Commencement: 1 July 1992, as inserted by RTA 1991 Sch.4 para.97.

<sup>1654</sup> Commencement: 1 July 1992, as inserted by RTA 1991 Sch.4 para.97.

<sup>1655</sup> Commencement: 1 July 1992, as inserted by RTA 1991 Sch.4 para.97.

- s.47(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 and the counterpart of a licence so sent in pursuance of this section must be sent to such address as the Secretary of State may determine.

### 3.7.16. Breach

#### ***RTA 1988 s.103<sup>1656</sup>: Obtaining licence, or driving, while disqualified***

- s.103(1) - a person is guilty of an offence if, while disqualified for holding or obtaining a licence, he:
- (a) obtains a licence, or
  - (b) drives a motor vehicle on a road.
- s.103(2) - a licence obtained by a person who is disqualified is of no effect (or, where the disqualification relates only to vehicles of a particular class, is of no effect in relation to vehicles of that class)."
- s.103(4) - subsection (1) above does not apply in relation to disqualification by virtue of section 101 of this Act.
- s.103(5) - subsection (1)(b) above does not apply in relation to disqualification by virtue of section 102 of this Act.
- s.103(6) - in the application of subsection (1) above to a person whose disqualification is limited to the driving of motor vehicles of a particular class by virtue of—
- (a) section 102, 117 or 117A of this Act, or
  - (b) subsection (9) of section 36 of the Road Traffic Offenders Act 1988 (disqualification until test is passed),
- the references to disqualification for holding or obtaining a licence and driving motor vehicles are references to disqualification for holding or obtaining a licence to drive and driving motor vehicles of that class."

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<sup>1656</sup> Commencement: 15 May 1989, RTA 1988 s.197(2).