



# Road Traffic Offenders Act 1988

## 1988 CHAPTER 53

### PART II

#### SENTENCE

##### *Disqualification*

#### **34 Disqualification for certain offences.**

(1) Where a person is convicted of an offence involving obligatory disqualification, the court must order him to be disqualified for such period not less than twelve months as the court thinks fit unless the court for special reasons thinks fit to order him to be disqualified for a shorter period or not to order him to be disqualified.

[<sup>F1</sup>(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.]

[<sup>F2</sup>(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.]

(3) <sup>M1</sup>Where a person convicted of an offence under any of the following provisions of the Road Traffic Act 1988, that is—

[<sup>F3</sup>(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), <sup>F4</sup> . . .

*Status: Point in time view as at 30/11/2022.*

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- [<sup>F5</sup>(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,
- [<sup>F6</sup>(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 [<sup>F7</sup>(“the new 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 [<sup>F8</sup>the period specified in subsection (3A)].

[<sup>F9</sup>(3A) The period is—

- (a) six years, where—
  - (i) an offence of which the person was convicted within the ten years mentioned in subsection (3) falls within paragraph (aa) of that subsection, and
  - (ii) the new offence also falls within that paragraph;
- (b) in any other case (but subject to subsection (4ZA)), three years.]

[<sup>F10</sup>(4) Subject to subsection (3) above [<sup>F11</sup>and subsection (4ZA) below], 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
  - <sup>F12</sup>(ii) . . . . .
  - [ an offence under section 1A of [<sup>F14</sup>the Road Traffic Act 1988]
  - <sup>F13</sup>(iia) (causing serious injury by dangerous driving), or]
  - [ an offence under section 3ZC of that Act (causing death by driving:
  - <sup>F15</sup>(iib) disqualified drivers), or
  - (iic) an offence under section 3ZD of that Act (causing serious injury by driving: disqualified drivers), <sup>F16</sup>...]
  - <sup>F16</sup>(iii) . . . . . 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.

[ Subsection (1) shall apply as if the reference to twelve months were a reference to five <sup>F17</sup>(4ZA) years in relation to a person convicted of—

- (a) an offence under section 1 of the Road Traffic Act 1988 (causing death by dangerous driving), or
- (b) an offence under section 3A of that Act (causing death by careless driving when under the influence of drink or drugs),

but this is subject to subsection (3) in cases within paragraph (a) of subsection (3A).]

(4A) For the purposes of subsection (4)(b) above there shall be disregarded any disqualification imposed under section 26 of this Act or [<sup>F18</sup>section 147 of the Powers of Criminal Courts (Sentencing) Act 2000][<sup>F19</sup>or section 164 of the Sentencing Code] 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>F20</sup>(4AA) For the purposes of subsection (4)(b), a disqualification is to be disregarded if the period of disqualification would have been less than 56 days but for an extension period added pursuant to—

- (a) section 35A or 35C,
- (b) section 248D of the Criminal Procedure (Scotland) Act 1995, or
- (c) section 147A of the Powers of Criminal Courts (Sentencing) Act 2000 [<sup>F21</sup>or section 166 of the Sentencing Code].]

[<sup>F22</sup>(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.]

(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.

[<sup>F23</sup>(5A) In relation to Scotland, references in this section to the court include the [<sup>F24</sup>justice of the peace court].]

(6) This section is subject to section 48 of this Act.

#### Textual Amendments

- F1** S. 34(1A) inserted (1.4.1992) by Aggravated Vehicle-Taking Act 1992 (c. 11), s. 3(2); S.I. 1992/764, art. 2
- F2** S. 34(2) substituted (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), s. 29(2); S.I. 1992/1286, art. 2, Sch (with art. 6(5)).
- F3** S. 34(3)(aa) inserted (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), s. 29(3); S.I. 1992/1286, art. 2, Sch (with art. 6(5)).
- F4** Word in s. 34(3)(b) omitted (1.10.2002) and repealed (*prosp.*) by virtue of 2002 c. 30, ss. 56(3)(a), 107, Sch. 8; S.I. 2002/2306, arts. 2(d)(v)(g)(iii)
- F5** S. 34(3)(ba) inserted (2.3.2015 for E.W., 1.3.2018 for S., 1.3.2018 for N.I.) by Crime and Courts Act 2013 (c. 22), s. 61(2), Sch. 22 para. 12 (with Sch. 22 para. 14); S.I. 2014/3268, art. 2; S.I. 2018/161, art. 2; S.I. 2018/162, art. 2
- F6** S. 34(3)(d) inserted (1.10.2002) by 2002 c. 30, s. 56(3)(b); S.I. 2002/2306, art. 2(d)(v)
- F7** Words in s. 34(3) inserted (28.6.2022) by Police, Crime, Sentencing and Courts Act 2022 (c. 32), ss. 86(5)(a), 208(5)(i) (with s. 86(9))
- F8** Words in s. 34(3) substituted (28.6.2022) by Police, Crime, Sentencing and Courts Act 2022 (c. 32), ss. 86(5)(b), 208(5)(i) (with s. 86(9))
- F9** S. 34(3A) inserted (28.6.2022) by Police, Crime, Sentencing and Courts Act 2022 (c. 32), ss. 86(6), 208(5)(i) (with s. 86(9))
- F10** S. 34(4)(4A) substituted (1.7.1992) for s. 34(4) by Road Traffic Act 1991 (c. 40, SIF 107:1), s. 29(4); S.I. 1992/1286, art. 2, Sch (with art. 6(5)).
- F11** Words in s. 34(4) inserted (28.6.2022) by Police, Crime, Sentencing and Courts Act 2022 (c. 32), ss. 86(7)(a), 208(5)(i) (with s. 86(9))
- F12** S. 34(4)(a)(ii) omitted (28.6.2022) by virtue of Police, Crime, Sentencing and Courts Act 2022 (c. 32), ss. 86(7)(b)(i), 208(5)(i) (with s. 86(9))
- F13** S. 34(4)(a)(iia) inserted (3.12.2012) by Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10), s. 151(1), Sch. 27 para. 5; S.I. 2012/2770, art. 2(g)

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- F14** Words in s. 34(4)(a)(ia) substituted (28.6.2022) by Police, Crime, Sentencing and Courts Act 2022 (c. 32), **ss. 86(7)(b)(ii)**, 208(5)(i) (with s. 86(9))
- F15** S. 34(4)(a)(iib)(iic) inserted (13.4.2015) by Criminal Justice and Courts Act 2015 (c. 2), s. 95(1), **Sch. 6 para. 4** (with s. 29(5)); S.I. 2015/778, art. 3, Sch. 1 para. 75
- F16** S. 34(4)(a)(iii) and word omitted (28.6.2022) by virtue of Police, Crime, Sentencing and Courts Act 2022 (c. 32), **ss. 86(7)(b)(iii)**, 208(5)(i) (with s. 86(9))
- F17** S. 34(4ZA) inserted (28.6.2022) by Police, Crime, Sentencing and Courts Act 2022 (c. 32), **ss. 86(8)**, 208(5)(i) (with s. 86(9))
- F18** Words in s. 34(4A) substituted (25.8.2000) by 2000 c. 6, ss. 165(1), 168(1), **Sch. 9 para. 121**
- F19** Words in s. 34(4A) inserted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 100(2)** (with Sch. 27); S.I. 2020/1236, reg. 2
- F20** S. 34(4AA) inserted (16.7.2018) by Coroners and Justice Act 2009 (c. 25), s. 182(5), **Sch. 21 para. 90(2)** (with s. 180); S.I. 2018/733, art. 2(c)
- F21** Words in s. 34(4AA)(c) inserted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 100(3)** (with Sch. 27); S.I. 2020/1236, reg. 2
- F22** S. 34(4B) inserted (24.9.2007) by Road Safety Act 2006 (c. 49), **ss. 25(2)**, 61(1)(10) (with s. 61(3)); S.I. 2007/2472, art. 2(d)
- F23** S. 34(5A) inserted (10.12.2007) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (Powers of District and JP Courts) Order 2007 (S.I. 2007/3480), arts. 1(1), **2(1)(b)**
- F24** Words in s. 34(5A) substituted (S.) (10.3.2008 for specified purposes, 2.6.2008 for specified purposes, 8.12.2008 for specified purposes, 23.2.2009 for specified purposes, 14.12.2009 for specified purposes, 22.2.2010 in so far as not already in force) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), s. 84(1), **sch. para. 7(d)**; S.S.I. 2008/42, art. 3, **sch.**; S.S.I. 2008/192, art. 3, **sch.**; S.S.I. 2008/329, art. 3, **sch.**; S.S.I. 2008/362, art. 3, **sch.**; S.S.I. 2009/432, art. 3, **sch. 1, sch. 2**

#### Modifications etc. (not altering text)

- C1** S. 34: power to exclude or modify conferred (1.7.1992) by Road Traffic Act 1988 (c. 52, SIF 107:1), **s. 193A(2)(b)** inserted (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), **s. 46(2)**; S.I. 1992/1286, art. 2, **Sch** (with art. 6(5)).
- C2** S. 34(5) modified (1.10.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 6 para. 15(b)** (with Sch. 13 para. 5); S.I. 2008/2504, art. 2(a)

#### Marginal Citations

- M1** 1988 c. 52.

### [<sup>F25</sup>34A Reduced disqualification period for attendance on courses.

- (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.
- (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),

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

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- (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.]

#### Textual Amendments

**F25** Ss. 34A-34C substituted for ss. 34A-34C (21.12.2012 for specified purposes, 24.6.2013 for specified purposes) by [Road Safety Act 2006 \(c. 49\)](#), [ss. 35, 61\(1\)\(10\)](#); [S.I. 2012/2938](#), [art. 2\(1\)\(a\)\(b\)](#) (with [art. 3](#))

#### Modifications etc. (not altering text)

**C3** S. 34A modified (temp.) (13.4.2015) by [Coroners and Justice Act 2009 \(c. 25\)](#), [s. 182\(5\)](#), [Sch. 22 paras. 30, 31](#) (with [s. 180](#)); [S.I. 2015/819](#), [art. 2\(c\)](#)

### [<sup>F25</sup>34B Certificates of completion of courses.

- (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.
- (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.
- (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.
- (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.
- (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.
- (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

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- that the course provider's decision not to give a certificate under subsection (1) above was contrary to subsection (4) above.
- (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.
- (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 local court) to either the supervising court or the relevant local court, for a declaration that the course provider is in default.
- (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.
- (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.
- (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.]

#### Textual Amendments

**F25** Ss. 34A-34C substituted for ss. 34A-34C (21.12.2012 for specified purposes, 24.6.2013 for specified purposes) by [Road Safety Act 2006 \(c. 49\)](#), **ss. 35, 61(1)(10)**; [S.I. 2012/2938](#), **art. 2(1)(a)(b)** (with **art. 3**)

#### Modifications etc. (not altering text)

**C4** S. 34B modified (temp.) (13.4.2015) by [Coroners and Justice Act 2009 \(c. 25\)](#), **s. 182(5)**, **Sch. 22 paras. 30, 32** (with **s. 180**); [S.I. 2015/819](#), **art. 2(c)**

### [<sup>F25</sup> **34BA** Approval of courses

- (1) If an application is made to the appropriate national authority for the approval of a course for the purposes of section 34A of this Act, the appropriate national authority must decide whether to grant or refuse the application.
- (2) In reaching that decision the appropriate national authority must have regard to—
- the nature of the course, and
  - whether the course provider is an appropriate person to provide the course and administer its provision efficiently and effectively,
- and may take into account any recommendations made by any persons appointed to consider the application.
- (3) A course may be approved subject to conditions specified by the appropriate national authority.

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- (4) An approval of a course is for the period specified by the appropriate national authority (which must not exceed seven years), subject to withdrawal of approval.
- (5) Regulations made by the appropriate national authority may make provision in relation to the approval of courses and may, in particular, include provision—
  - (a) in relation to the making of applications for approval,
  - (b) for the payment in respect of applications for approval, or of approvals, (or of both) of fees of such amounts as are prescribed by the regulations,
  - (c) specifying the maximum fees that a person may be required to pay for a course and by when they are to be paid,
  - (d) for the monitoring of courses and course providers,
  - (e) in relation to withdrawing approval,
  - (f) for an appeal to lie to the [<sup>F26</sup>First-tier Tribunal] against a refusal of an application for approval, the imposition of conditions on the grant of such an application or the withdrawal of approval, and
  - (g) authorising the appropriate national authority to make available (with or without charge) information about courses and course providers.]

#### Textual Amendments

- F25** Ss. 34A-34C substituted for ss. 34A-34C (21.12.2012 for specified purposes, 24.6.2013 for specified purposes) by [Road Safety Act 2006 \(c. 49\)](#), **ss. 35, 61(1)(10)**; [S.I. 2012/2938](#), [art. 2\(1\)\(a\)\(b\)](#) (with [art. 3](#))
- F26** Words in s. 34BA(5)(f) substituted (1.9.2009) by The Transfer of Functions (Transport Tribunal and Appeal Panel) Order (2009 SI1885), [art. 1\(1\)](#), [Sch. 1 para. 16](#)

#### [<sup>F25</sup>34C Provisions supplementary to sections 34A and 34B.

- (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.
- (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,
  - (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.
- (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;



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“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
- (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.

- (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.
- (5) Any power to make regulations under section 34A, 34B or 34BA of this Act or this section shall be exercisable by statutory instrument.
- (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.
- (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.]

#### Textual Amendments

**F25** Ss. 34A-34C substituted for ss. 34A-34C (21.12.2012 for specified purposes, 24.6.2013 for specified purposes) by [Road Safety Act 2006 \(c. 49\)](#), **ss. 35, 61(1)(10)**; [S.I. 2012/2938](#), **art. 2(1)(a)(b)** (with **art. 3**)

#### Modifications etc. (not altering text)

**C5** Ss. 34 - 48: power to exclude or modify conferred (1.7.1992) by [Road Traffic Act 1988 \(c. 52, SIF 107:1\)](#), **s. 193A(2)(b)** (inserted (1.7.1992) by [Road Traffic Act 1991 \(c. 40, SIF 107:1\)](#), **s. 46(2)**; [S.I. 1992/1286](#), **art. 2, Sch.** (with **art. 6(5)**))

**C6** S. 34C: transfer of certain functions (1.7.1999) by [S.I. 1999/672](#), **art. 2, Sch. 1**

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### 35 Disqualification for repeated offences.

(1) Where—

- (a) a person is convicted of an offence [<sup>F27</sup>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.

[<sup>F28</sup>(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.]

(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 [<sup>F29</sup>, subject to subsection (2A),] to be taken into account if it [<sup>F30</sup>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.

[<sup>F31</sup>(2A) A previous disqualification imposed on an offender for a fixed period is not to be taken into account for the purposes of subsection (2) if that period would have been less than 56 days but for an extension period added pursuant to—

- (a) section 35A or 35C,
- (b) section 248D of the Criminal Procedure (Scotland) Act 1995, or
- (c) section 147A of the Powers of Criminal Courts (Sentencing) Act 2000 [<sup>F32</sup>or section 166 of the Sentencing Code].]

(3) Where an offender is convicted on the same occasion of more than one offence [<sup>F33</sup>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.

(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

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- (c) any circumstances which, within the three years immediately preceding the conviction, have been taken into account under that subsection in ordering the offender to be disqualified for a shorter period or not ordering him to be disqualified.
- (5) References in this section to disqualification do not include a disqualification imposed under section 26 of this Act or <sup>F34</sup>section 147 of the Powers of Criminal Courts (Sentencing) Act 2000<sup>F35</sup> or section 164 of the Sentencing Code<sup>F36</sup> 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].
- <sup>F37</sup>(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.]
- (6) In relation to Scotland, references in this section to the court include the <sup>F38</sup>justice of the peace court].
- (7) This section is subject to section 48 of this Act.

#### Textual Amendments

- F27** Words in s. 35(1)(a) substituted (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), s. 48, **Sch. 4 para. 95(2)**; S.I. 1992/1286, art. 2, **Sch.** (with art. 6(5))
- F28** S. 35(1A) inserted (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), s. 48, **Sch. 4 para. 95(3)**; S.I. 1992/1286, art. 2, **Sch.** (with art. 6(5))
- F29** Words in s. 35(2) inserted (16.7.2018) by Coroners and Justice Act 2009 (c. 25), s. 182(5), **Sch. 21 para. 90(6)(a)** (with s. 180); S.I. 2018/733, art. 2(c)
- F30** Words in s. 35(2) substituted (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), s. 48, **Sch. 4 para. 95(4)**; S.I. 1992/1286, art. 2, **Sch.** (with art. 6(5))
- F31** S. 35(2A) inserted (16.7.2018) by Coroners and Justice Act 2009 (c. 25), s. 182(5), **Sch. 21 para. 90(6)(b)** (with s. 180); S.I. 2018/733, art. 2(c)
- F32** Words in s. 35(2A)(c) inserted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 101(2)** (with Sch. 27); S.I. 2020/1236, reg. 2
- F33** Words in s. 35(3) substituted (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), s. 48, **Sch. 4 para. 95(5)**; S.I. 1992/1286, art. 2, **Sch.** (with art. 6(5))
- F34** Words in s. 35(5) substituted (25.8.2000) by 2000 c. 6, ss. 165(1), 168(1), **Sch. 9 para. 122**
- F35** Words in s. 35(5) inserted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 101(3)** (with Sch. 27); S.I. 2020/1236, reg. 2
- F36** Words in s. 35(5) substituted (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), s. 48, **Sch. 4 para. 95(6)**; S.I. 1992/1286, art. 2, **Sch.** (with art. 6(5))
- F37** S. 35(5A) inserted (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), s. 48, **Sch. 4 para. 95(7)**; S.I. 1992/1286, art. 2, **Sch.** (with art. 6(5))
- F38** Words in s. 35(6) substituted (S.) (10.3.2008 for specified purposes, 2.6.2008 for specified purposes, 8.12.2008 for specified purposes, 23.2.2009 for specified purposes, 14.12.2009 for specified purposes, 22.2.2010 in so far as not already in force) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), s. 84(1), **sch. para. 7(d)**; S.S.I. 2008/42, art. 3, sch.; S.S.I. 2008/192, art. 3, sch.; S.S.I. 2008/329, art. 3, sch.; S.S.I. 2008/362, art. 3, sch.; S.S.I. 2009/432, art. 3, sch. 1, sch. 2

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#### Modifications etc. (not altering text)

- C7** S. 35: power to exclude or modify conferred (1.7.1992) by [Road Traffic Act 1988 \(c. 52, SIF 107:1\)](#), [s. 193A\(2\)\(b\)](#) (inserted (1.7.1992) by [Road Traffic Act 1991 \(c. 40, SIF 107:1\)](#), [s. 46\(2\)](#); S.I. 1992/1286, [art. 2](#), [Sch.](#) (with [art. 6\(5\)](#))).
- C8** S. 35(5A) modified (1.10.2008) by [Serious Crime Act 2007 \(c. 27\)](#), [s. 94\(1\)](#), [Sch. 6 para. 15\(c\)](#) (with [Sch. 13 para. 5](#)); S.I. 2008/2504, [art. 2\(a\)](#)

### [<sup>F39</sup>35A Extension of disqualification where custodial sentence also imposed

- (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.
- (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.
- (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.
- (4) The appropriate extension period is—
  - (a) where an order under [<sup>F40</sup>section 321(2) of the Sentencing Code (life sentence: minimum term order)] 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 [<sup>F41</sup>within the meaning given by section 233 of that Code] (offenders under 18: detention and training orders), a period equal to half the term of that order;
  - <sup>F42</sup>(c) .....
  - <sup>F42</sup>(d) .....
  - (e) where [<sup>F43</sup>section 266 or 279 of that Code] (extended sentence for certain violent [<sup>F44</sup>, sexual or terrorism] offences: persons 18 or over) applies in relation to the custodial sentence, [<sup>F45</sup>but the sentence is not within section 247A(2A) of the Criminal Justice Act 2003 (sentences for terrorist offenders in respect of which no early release possible),] a period equal to [<sup>F46</sup>two-thirds of] the term imposed pursuant to [<sup>F47</sup>section 266(a) or 279(a) of that Code]<sup>F48</sup> ...;
  - (f) where [<sup>F49</sup>section 254 of that Code] (extended sentence for certain violent [<sup>F50</sup>, sexual or terrorism] offences: persons under 18) applies in relation to the custodial sentence, [<sup>F51</sup>but the sentence is not within section 247A(2A) of the Criminal Justice Act 2003,] a period equal to [<sup>F52</sup>two-thirds of] the term imposed pursuant to [<sup>F53</sup>section 254(a) of that Code]<sup>F48</sup> ...;
  - <sup>F54</sup>(fza) [ in a case that would fall within paragraph (e) or (f) but for the fact that the custodial sentence falls within section 247A(2A) of the Criminal Justice Act 2003, a period equal to the term imposed under section 266(a) or 279(a) or (as the case may be) section 254(a) of the Sentencing Code;]
  - <sup>F55</sup>(fa) [ in the case of a sentence under [<sup>F56</sup>section [<sup>F57</sup>252A,] 265 or 278 of that Code] (special custodial sentence for certain offenders of particular concern), a period equal to [<sup>F58</sup>two-thirds] of the term imposed pursuant to [<sup>F59</sup>section [<sup>F60</sup>252A(4)(a),] 265(2)(a) or 278(2)(a) of that Code];]

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- [<sup>F61</sup>(fb) in the case of a sentence under section 268A or 282A of that Code (serious terrorism sentences), a period equal to the term imposed by the court pursuant to section 268C(2) or 282C(2) of that Code;
- (fc) in the case of a sentence in respect of which section 244ZA of the Criminal Justice Act 2003 applies to the offender, a period equal to two-thirds of the sentence;
- (fd) in any other case where section 247A of the Criminal Justice Act 2003 applies to the offender in respect of the custodial sentence, a period equal to two-thirds of the sentence;]
- <sup>F62</sup>(g) .....
- (h) in any other case, a period equal to half the custodial sentence imposed <sup>F63</sup>....
- (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.
- <sup>F64</sup>(6) .....
- (7) This section does not apply where—
- (a) the custodial sentence was a suspended sentence, [<sup>F65</sup>or]
- <sup>F66</sup>(b) the court has made a whole life order under section 321(3) of the Sentencing Code in relation to the custodial sentence.]
- (8) Subsection (9) applies where an amending order provides that the proportion of a prisoner's sentence referred to in section [<sup>F67</sup>243A(3)(a),] 244(3)(a) <sup>F68</sup>... 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”).
- (9) The Secretary of State may by order—
- (a) if the amending order makes provision in respect of section [<sup>F69</sup> 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;
- <sup>F70</sup>(b) .....
- (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.
- (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 [<sup>F71</sup>section 222 of the Sentencing Code];
- “suspended sentence” has the meaning given by [<sup>F72</sup>section 286 of the Sentencing Code].

#### Textual Amendments

**F39** Ss. 35A, 35B inserted (13.4.2015) by [Coroners and Justice Act 2009 \(c. 25\)](#), s. 182(5), [Sch. 16 para. 2\(2\)](#) (with s. 180, [Sch. 22 para. 29](#)); S.I. 2015/819, art. 2(b)

**F40** Words in s. 35A(4)(a) substituted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 24 para. 102\(2\)\(a\)](#) (with [Sch. 24 para. 447](#), [Sch. 27](#)); S.I. 2020/1236, reg. 2

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- F41** Words in s. 35A(4)(b) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 102(2)(b)** (with Sch. 24 para. 447, Sch. 27); S.I. 2020/1236, reg. 2
- F42** S. 35A(4)(c)(d) omitted (3.12.2012) by virtue of 2012 c. 10, Sch. 10 para. 5; S.I. 2012/2906, art. 2(h)
- F43** Words in s. 35A(4)(e) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 102(2)(c)(i)** (with Sch. 24 para. 447, Sch. 27); S.I. 2020/1236, reg. 2
- F44** Words in s. 35A(4)(e) substituted (12.4.2019) by Counter-Terrorism and Border Security Act 2019 (c. 3), s. 27(3), **Sch. 4 para. 6(a)** (with s. 25(3)(4))
- F45** Words in s. 35A(4)(e) inserted (28.4.2022) by Police, Crime, Sentencing and Courts Act 2022 (c. 32), **ss. 140(1)(a), 208(4)(q)**
- F46** Words in s. 35A(4)(e) substituted (3.12.2012) by 2012 c. 10, Sch. 21 para. 4(2)(b); S.I. 2012/2906, art. 2(s)
- F47** Words in s. 35A(4)(e) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 102(2)(c)(ii)** (with Sch. 24 para. 447, Sch. 27); S.I. 2020/1236, reg. 2
- F48** Words in s. 35A(4)(e)(f) omitted (13.4.2015) by virtue of Criminal Justice and Courts Act 2015 (c. 2), **ss. 30(1)(a), 95(1)**; S.I. 2015/778, art. 3, Sch. 1 para. 25; S.I. 2015/778, art. 3, Sch. 1 para. 25
- F49** Words in s. 35A(4)(f) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 102(2)(d)(i)** (with Sch. 24 para. 447, Sch. 27); S.I. 2020/1236, reg. 2
- F50** Words in s. 35A(4)(f) substituted (12.4.2019) by Counter-Terrorism and Border Security Act 2019 (c. 3), s. 27(3), **Sch. 4 para. 6(b)** (with s. 25(3)(4))
- F51** Words in s. 35A(4)(f) inserted (28.4.2022) by Police, Crime, Sentencing and Courts Act 2022 (c. 32), **ss. 140(1)(b), 208(4)(q)**
- F52** Words in s. 35A(4)(f) substituted (3.12.2012) by 2012 c. 10, Sch. 21 para. 4(3)(b); S.I. 2012/2906, art. 2(s)
- F53** Words in s. 35A(4)(f) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 102(2)(d)(ii)** (with Sch. 24 para. 447, Sch. 27); S.I. 2020/1236, reg. 2
- F54** S. 35A(4)(fza) inserted (28.4.2022) by Police, Crime, Sentencing and Courts Act 2022 (c. 32), **ss. 140(1)(c), 208(4)(q)**
- F55** S. 35A(4)(fa) inserted (13.4.2015) by Criminal Justice and Courts Act 2015 (c. 2), s. 95(1), **Sch. 1 para. 11(3)**; S.I. 2015/778, art. 3, Sch. 1 para. 72
- F56** Words in s. 35A(4)(fa) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 102(2)(e)(i)** (with Sch. 24 para. 447, Sch. 27); S.I. 2020/1236, reg. 2
- F57** Word in s. 35A(4)(fa) inserted (28.4.2022) by Police, Crime, Sentencing and Courts Act 2022 (c. 32), **ss. 140(1)(d)(i), 208(4)(q)**
- F58** Word in s. 35A(4)(fa) substituted (28.4.2022) by Police, Crime, Sentencing and Courts Act 2022 (c. 32), **ss. 140(1)(d)(ii), 208(4)(q)**
- F59** Words in s. 35A(4)(fa) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 102(2)(e)(ii)** (with Sch. 24 para. 447, Sch. 27); S.I. 2020/1236, reg. 2
- F60** Word in s. 35A(4)(fa) inserted (28.4.2022) by Police, Crime, Sentencing and Courts Act 2022 (c. 32), **ss. 140(1)(d)(iii), 208(4)(q)**
- F61** S. 35A(4)(fb)-(fd) inserted (28.4.2022) by Police, Crime, Sentencing and Courts Act 2022 (c. 32), **ss. 140(1)(e), 208(4)(q)**
- F62** S. 35A(4)(g) omitted (1.12.2020) by virtue of Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 102(2)(f)** (with Sch. 24 para. 447, Sch. 27); S.I. 2020/1236, reg. 2
- F63** Words in s. 35A(4)(h) omitted (13.4.2015) by virtue of Criminal Justice and Courts Act 2015 (c. 2), **ss. 30(1)(b), 95(1)**; S.I. 2015/778, art. 3, Sch. 1 para. 25
- F64** S. 35A(6) omitted (13.4.2015) by virtue of Criminal Justice and Courts Act 2015 (c. 2), **ss. 30(1)(c), 95(1)**; S.I. 2015/778, art. 3, Sch. 1 para. 25
- F65** Word in s. 35A(7)(a) inserted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 102(3)(a)** (with Sch. 24 para. 447, Sch. 27); S.I. 2020/1236, reg. 2
- F66** S. 35A(7)(b) substituted for s. 35A(7)(b)(c) (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 102(3)(b)** (with Sch. 24 para. 447, Sch. 27); S.I. 2020/1236, reg. 2
- F67** Word in s. 35A(8) inserted (3.12.2012) by 2012 c. 10, Sch. 14 para. 1(a); S.I. 2012/2906, art. 2(l)

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- F68** Words in s. 35A(8) omitted (3.12.2012) by virtue of 2012 c. 10, Sch. 21 para. 4(4); S.I. 2012/2906, art. 2(s)
- F69** Words in s. 35A(9)(a) inserted (3.12.2012) by 2012 c. 10, Sch. 14 para. 1(b); S.I. 2012/2906, art. 2(l)
- F70** S. 35A(9)(b) omitted (3.12.2012) by virtue of 2012 c. 10, Sch. 21 para. 4(5); S.I. 2012/2906, art. 2(s)
- F71** Words in s. 35A(11) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 102(4)(a)** (with Sch. 24 para. 447, Sch. 27); S.I. 2020/1236, reg. 2
- F72** Words in s. 35A(11) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 102(4)(b)** (with Sch. 24 para. 447, Sch. 27); S.I. 2020/1236, reg. 2

#### **Modifications etc. (not altering text)**

- C9** S. 35A excluded by 2003 c. 32, s. 54(3A)(a) (as inserted (1.8.2017 as notified in the London Gazette dated 1.8.2017 (Issue 62012, p. 14601)) by Criminal Justice and Courts Act 2015 (c. 2), s. 95(1), **Sch. 7 para. 2(4)** (with Sch. 7 para. 27); S.I. 2017/189, art. 3)
- C10** S. 35A modified in part (1.12.2020 immediately before the consolidation date (see 2020 c. 9, ss. 3, 5(2)(3) and 2020 c. 17, ss. 2, 416)) by Sentencing (Pre-consolidation Amendments) Act 2020 (c. 9), **ss. 1, 5(2)(3)**; S.I. 2012/1236, reg. 2
- C11** S. 35A(4)(h): power to modify conferred (13.4.2015) by Coroners and Justice Act 2009 (c. 25), s. 182(5), **Sch. 22 para. 34(2)** (with s. 180); S.I. 2015/819, art. 2(c)

### **35B Effect of custodial sentence in other cases**

- (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.
- (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.
- (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.
- (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).
- (5) In this section “custodial sentence” and “suspended sentence” have the same meaning as in section 35A.]

#### **Textual Amendments**

- F39** Ss. 35A, 35B inserted (13.4.2015) by Coroners and Justice Act 2009 (c. 25), s. 182(5), **Sch. 16 para. 2(2)** (with s. 180, Sch. 22 para. 29); S.I. 2015/819, art. 2(b)

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**[<sup>F73</sup>35C Extension of disqualification where sentence of imprisonment also imposed:  
Scotland**

- (1) This section applies where a person is convicted in Scotland of an offence for which the court—
  - (a) imposes a sentence of imprisonment, and
  - (b) orders the person to be disqualified under section 34 or 35.
- (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.
- (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.
- (4) The appropriate extension period is—
  - (a) in the case of a life prisoner, a period equal to the punishment part of the life sentence;
  - [ in the case of a person serving a serious terrorism sentence, a period equal to
  - <sup>F74</sup>(aa) the appropriate custodial term;
  - (ab) in the case of a person serving an extended sentence that falls within section 1AB(2A) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (“the 1993 Act”), a period equal to the custodial term;
  - (ac) in the case of a person serving an extended sentence in respect of which section 1AB(3) to (5) of the 1993 Act applies to the person, a period equal to two-thirds of the custodial term;]
  - <sup>F75</sup>(b) . . . . .
  - (c) in the case of a person serving [<sup>F76</sup>any other] extended sentence, a period equal to half the [<sup>F77</sup>custodial] term;
  - [ in the case of a person serving a sentence imposed under section 205ZC of
  - <sup>F78</sup>(ca) the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”), a period equal to two-thirds of the appropriate custodial term;
  - (cb) in the case of a person serving any other sentence of imprisonment in respect of which section 1AB of the 1993 Act applies to the person, a period equal to two-thirds of the sentence;]
  - (d) in any other case, a period equal to half the sentence of imprisonment 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.
- (6) For the purposes of subsection (4), a sentence is to be taken to start on the date of commencement of the sentence.
- (7) Subsection (8) applies where an amending order provides for [<sup>F79</sup>a reference in section 1(1) or (3) or 1AB(3)(a) of the 1993 Act to a particular proportion of a prisoner’s sentence to be construed as a reference to some other proportion (“the new proportion”) specified in the order].
- (8) The Secretary of State may by order provide that the proportion specified in subsection [<sup>F80</sup>(4)(ac), (c), (ca), (cb) or (d)] of this section is to be read, in the case of a sentence of imprisonment to which the amending order applies, as a reference to the new proportion.



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(9) An order under subsection (8) 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.

(10) In this section—

“amending order” means an order made by the Scottish Ministers under <sup>F81</sup>section 27(2)(b) of the 1993 Act];

<sup>F82</sup>“appropriate custodial term”—

(a) in relation to a serious terrorism sentence, means the term imposed under subsection (5)(a) or (as the case may be) (7)(a) of section 205ZA of the 1995 Act;

(b) in relation to a sentence imposed under section 205ZC of the 1995 Act, means the term imposed under subsection (3)(a) or (as the case may be) (4)(a) of that section;]

“<sup>F83</sup>custodial] term” has the meaning given by section 210A(2)(a) of the <sup>F84</sup>1995 Act];

<sup>F85</sup>  
...  
<sup>F85</sup>  
...

“extended sentence” has the meaning given by section 210A of the 1995 Act;

“life prisoner” has the meaning given by <sup>F86</sup>section 2(1) of the 1993 Act];

<sup>F87</sup>“punishment part”, in relation to a life sentence, means the punishment part of the sentence as specified in an order mentioned in section 2(2) of the 1993 Act;]

“sentence of imprisonment” includes—

(a) an order for detention in residential accommodation under section 44 of the 1995 Act, and

(b) a sentence of detention under section 205, <sup>F88</sup>205ZA(7), 205ZC(4),] 207 or 208 of the 1995 Act;]

<sup>F89</sup>“serious terrorism sentence” means a sentence imposed under section 205ZA of the 1995 Act].

#### Textual Amendments

**F73** Ss. 35C, 35D inserted (16.7.2018) by Coroners and Justice Act 2009 (c. 25), s. 182(5), **Sch. 16 para. 2(3)** (with s. 180, Sch. 22 paras. 29, 36); S.I. 2018/733, art. 2(b)

**F74** S. 35C(4)(aa)-(ac) inserted (28.4.2022) by Police, Crime, Sentencing and Courts Act 2022 (c. 32), **ss. 142(2)(a)**, 208(4)(q)

**F75** S. 35C(4)(b) omitted (28.4.2022) by virtue of Police, Crime, Sentencing and Courts Act 2022 (c. 32), **ss. 142(2)(b)**, 208(4)(q)

**F76** Words in s. 35C(4)(c) substituted (28.4.2022) by Police, Crime, Sentencing and Courts Act 2022 (c. 32), **ss. 142(2)(c)(i)**, 208(4)(q)

**F77** Word in s. 35C(4)(c) substituted (28.4.2022) by Police, Crime, Sentencing and Courts Act 2022 (c. 32), **ss. 142(2)(c)(ii)**, 208(4)(q)

**F78** S. 35C(4)(ca)(cb) inserted (28.4.2022) by Police, Crime, Sentencing and Courts Act 2022 (c. 32), **ss. 142(2)(d)**, 208(4)(q)

**F79** Words in s. 35C(7) substituted (28.4.2022) by Police, Crime, Sentencing and Courts Act 2022 (c. 32), **ss. 142(3)**, 208(4)(q)

**F80** Words in s. 35C(8) substituted (28.4.2022) by Police, Crime, Sentencing and Courts Act 2022 (c. 32), **ss. 142(4)**, 208(4)(q)

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- F81** Words in s. 35C(10) substituted (28.4.2022) by [Police, Crime, Sentencing and Courts Act 2022 \(c. 32\)](#), [ss. 142\(5\)\(a\)](#), 208(4)(q)
- F82** Words in s. 35C(10) inserted (28.4.2022) by [Police, Crime, Sentencing and Courts Act 2022 \(c. 32\)](#), [ss. 142\(5\)\(b\)](#), 208(4)(q)
- F83** Word in s. 35C(10) substituted (28.4.2022) by [Police, Crime, Sentencing and Courts Act 2022 \(c. 32\)](#), [ss. 142\(5\)\(c\)\(i\)](#), 208(4)(q)
- F84** Words in s. 35C(10) substituted (28.4.2022) by [Police, Crime, Sentencing and Courts Act 2022 \(c. 32\)](#), [ss. 142\(5\)\(c\)\(ii\)](#), 208(4)(q)
- F85** Words in s. 35C(10) omitted (28.4.2022) by virtue of [Police, Crime, Sentencing and Courts Act 2022 \(c. 32\)](#), [ss. 142\(5\)\(d\)](#), 208(4)(q)
- F86** Words in s. 35C(10) substituted (28.4.2022) by [Police, Crime, Sentencing and Courts Act 2022 \(c. 32\)](#), [ss. 142\(5\)\(e\)](#), 208(4)(q)
- F87** Words in s. 35C(10) substituted (28.4.2022) by [Police, Crime, Sentencing and Courts Act 2022 \(c. 32\)](#), [ss. 142\(5\)\(f\)](#), 208(4)(q)
- F88** Words in s. 35C(10) inserted (28.4.2022) by [Police, Crime, Sentencing and Courts Act 2022 \(c. 32\)](#), [ss. 142\(5\)\(g\)](#), 208(4)(q)
- F89** Words in s. 35C(10) inserted (28.4.2022) by [Police, Crime, Sentencing and Courts Act 2022 \(c. 32\)](#), [ss. 142\(5\)\(h\)](#), 208(4)(q)

#### **Modifications etc. (not altering text)**

- C12** S. 35C excluded by [2003 c. 32](#), s. 54(3A)(a) (as inserted (1.8.2017 as notified in the London Gazette dated 1.8.2017 (Issue 62012, p. 14601)) by [Criminal Justice and Courts Act 2015 \(c. 2\)](#), s. 95(1), Sch. 7 para. 2(4) (with Sch. 7 para. 27); [S.I. 2017/189](#), art. 3)

### **[<sup>F73</sup>35D Effect of sentence of imprisonment in other cases: Scotland**

- (1) This section applies where a person is convicted in Scotland 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 sentence of imprisonment for another offence, or
  - (b) at the time of sentencing for the offence, a sentence of imprisonment imposed on the person on an earlier occasion has not expired.
- (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.
- (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 sentence of imprisonment.
- (4) If the court proposes to order the person to be disqualified under section 34 or 35 and to impose a sentence of imprisonment for the same offence, the court may not in relation to that disqualification take that sentence of imprisonment into account for the purposes of subsection (2).
- (5) In this section “sentence of imprisonment” has the same meaning as in section 35C.]

#### **Textual Amendments**

- F73** Ss. 35C, 35D inserted (16.7.2018) by [Coroners and Justice Act 2009 \(c. 25\)](#), s. 182(5), [Sch. 16 para. 2\(3\)](#) (with s. 180, Sch. 22 paras. 29, 36); [S.I. 2018/733](#), art. 2(b)

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**[<sup>F90</sup>36 Disqualification until test is passed.**

- (1) Where this subsection applies to a person the court must order him to be disqualified until he passes the appropriate driving test.
- (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,<sup>F91</sup>...
  - [<sup>F92</sup>(b) an offence under section 1 of the Road Traffic Act 1988 (causing death by dangerous driving),
  - (c) an offence under section 1A of that Act (causing serious injury by dangerous driving),
  - (d) an offence under section 2 of that Act (dangerous driving),
  - (e) an offence under section 3ZC of that Act (causing death by driving: disqualified drivers), or
  - (f) an offence under section 3ZD of that Act (causing serious injury by driving: disqualified drivers).]
- (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.
- (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).
- (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.
- (6) In determining whether to make an order under subsection (4) above, the court shall have regard to the safety of road users.
- (7) Where a person is disqualified until he passes the extended driving test—
  - (a) any earlier order under this section shall cease to have effect, and
  - (b) a court shall not make a further order under this section while he is so disqualified.
- (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

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Road Traffic Act 1988, that the person disqualified has passed the test in question since the order was made.

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

<sup>F93</sup>(10) . . . . .

[ Where a person's driving record is endorsed with particulars of a disqualification under <sup>F94</sup>(10A) 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.]

- (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, [<sup>F95</sup>an][<sup>F96</sup>EEA State], Gibraltar or a designated country or territory <sup>F97</sup>. . . , or  
 (b) for the purposes of obtaining a British Forces licence (as defined by section 88(8) of [<sup>F98</sup>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.

[ For the purposes of subsection (11) above, “designated country or territory” means a <sup>F99</sup>(11A) 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.]

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

- (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.

- (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.]

#### Textual Amendments

- F90** S. 36 substituted (1.7.1992) by [Road Traffic Act 1991 \(c. 40, SIF 107:1\)](#), s. 32; S.I. 1992/1286, art. 2, [Sch.](#) (with art. 6(5))
- F91** Word in s. 36(2)(a) omitted (13.4.2015) by virtue of [Criminal Justice and Courts Act 2015 \(c. 2\)](#), s. 95(1), [Sch. 6 para. 5\(2\)](#) (with s. 29(5)); S.I. 2015/778, art. 3, [Sch. 1 para. 75](#)
- F92** S. 36(2)(b)-(f) substituted for s. 36(2)(b) (13.4.2015) by [Criminal Justice and Courts Act 2015 \(c. 2\)](#), s. 95(1), [Sch. 6 para. 5\(3\)](#) (with s. 29(5)); S.I. 2015/778, art. 3, [Sch. 1 para. 75](#)
- F93** S. 36(10) repealed (8.6.2015) by [Road Safety Act 2006 \(c. 49\)](#), s. 61(1)(10), [Sch. 3 para. 39](#), [Sch. 7\(4\)](#); S.I. 2015/560, art. 3 (with arts. 4-9)
- F94** S. 36(10A) inserted (1.4.2009) by [Road Safety Act 2006 \(c. 49\)](#), s. 61(1)(10), [Sch. 2 para. 7](#); S.I. 2008/3164, art. 4(b)
- F95** Word in s. 36(11)(a) substituted (31.12.2020) by [The Driving Licences \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1251\)](#), regs. 1(2), [3\(2\)](#); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)
- F96** Words in s. 36 substituted (1.1.1997) by S.I. 1996/1974, reg. 3, [Sch. 2 para. 3\(2\)\(a\)](#)
- F97** Words in s. 36(11)(a) repealed by virtue of S.I. 1996/1974, reg. 3, [Sch. 2](#), para. 3(2)(b)
- F98** Words in s. 36(11)(b) substituted (1.1.1997) by S.I. 1996/1974, reg. 3, [Sch. 2 para. 3\(3\)](#)

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**F99** S. 36(11A) substituted (31.8.1998) by 1998/1917, art. 3

#### Modifications etc. (not altering text)

**C13** S. 36: power to exclude or modify conferred (1.7.1992) by Road Traffic Act 1988 (c. 52, SIF 107:1), s. 193A(2)(b) (inserted (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), s. 46(2); S.I. 1992/1286, art. 2, Sch. (with art. 6(5))).

### 37 Effect of order of disqualification.

(1) Where the holder of a licence is disqualified by an order of a court, the licence shall be treated as being revoked with effect from the beginning of the period of disqualification.

[<sup>F100</sup>(1A) Where—

(a) the disqualification is for a fixed period shorter than 56 days [<sup>F101</sup>(disregarding any extension period)] 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 [<sup>F102</sup>(including any extension period)].]

[<sup>F103</sup>(1B) In subsection (1A) “extension period” means an extension period added pursuant to—

(a) section 35A or 35C,

(b) section 248D of the Criminal Procedure (Scotland) Act 1995, or

(c) section 147A of the Powers of Criminal Courts (Sentencing) Act 2000 [<sup>F104</sup>or section 166 of the Sentencing Code].]

(2) Where the holder of the licence appeals against the order and the disqualification is suspended under section 39 of this Act, the period of disqualification shall be treated for the purpose of subsection (1) above as beginning on the day on which the disqualification ceases to be suspended.

(3) Notwithstanding anything in Part III of the Road Traffic Act 1988, a person disqualified by an order of a court under section [<sup>F105</sup>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.

[<sup>F106</sup>(4) Notwithstanding anything in Part III of the Road Traffic Act 1988, a person who holds a Community licence which authorises that person to drive motor vehicles of a particular class, but who is disqualified by an order of a court under section 36 of this Act, is (unless the person is also disqualified otherwise than by virtue of such an order) entitled to drive a motor vehicle of that class in accordance with the same conditions as if the person were authorised to drive a motor vehicle of that class by a provisional licence.]

#### Textual Amendments

**F100** S. 37(1A) inserted (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), s. 33; S.I. 1992/1286, art. 2, Sch. (with art. 6(5))

**F101** Words in s. 37(1A)(a) inserted (16.7.2018) by Coroners and Justice Act 2009 (c. 25), s. 182(5), Sch. 21 para. 90(7)(a) (with s. 180); S.I. 2018/733, art. 2(c)

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- F102** Words in s. 37(1A) inserted (16.7.2018) by Coroners and Justice Act 2009 (c. 25), s. 182(5), **Sch. 21 para. 90(7)(b)** (with s. 180); S.I. 2018/733, art. 2(c)
- F103** S. 37(1B) inserted (16.7.2018) by Coroners and Justice Act 2009 (c. 25), s. 182(5), **Sch. 21 para. 90(7)(c)** (with s. 180); S.I. 2018/733, art. 2(c)
- F104** Words in s. 37(1B)(c) inserted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 103** (with Sch. 27); S.I. 2020/1236, reg. 2
- F105** Word in s. 37(3) substituted (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), s. 48, **Sch. 4 para. 96**; S.I. 1992/1286, art. 2, Sch. (with art. 6(5))
- F106** S. 37(4) added (4.1.2016) by The Road Traffic Offenders Act 1988 and Motor Vehicles (Driving Licences) (Amendment) Regulations 2015 (S.I. 2015/2004), regs. 1, **2(2)**

**Modifications etc. (not altering text)**

- C14** S. 37: power to exclude or modify conferred (1.7.1992) by Road Traffic Act 1988 (c. 52, SIF 107:1), **s. 193A(2)(b)** (inserted (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), **s. 46(2)**; S.I. 1992/1286, art. 2, Sch. (with art. 6(5))).
- C15** Ss. 36(4), 37(3) extended by Road Traffic (Consequential Provisions) Act 1988 (c. 54, SIF 107:1), s. 5, **Sch. 4 para. 7(5)**

[<sup>F107</sup>**37A Surrender of licence to Secretary of State where disqualified**

- (1) This section applies where—
- (a) a person who is the holder of a licence is disqualified by an order of a court, and
  - (b) the Secretary of State is not already in receipt of the licence.
- (2) The Secretary of State may serve on the person a notice in writing requiring the person to surrender the licence to the Secretary of State at such address as the Secretary of State may determine, before the end of the period of 28 days beginning with the date on which the notice is served.
- (3) A notice under subsection (2) may be served on a person—
- (a) by delivering it to the person,
  - (b) by leaving it at the person’s proper address, or
  - (c) by sending it to the person by post.
- (4) A person who, without reasonable excuse, fails to comply with a notice under subsection (2) is guilty of an offence.
- (5) For the purposes of—
- (a) subsection (3), and
  - (b) section 7 of the Interpretation Act 1978 in its application to subsection (3),
- a person’s “proper address” is the person’s latest address as known to the Secretary of State.]

**Textual Amendments**

- F107** S. 37A inserted (30.11.2022) by Police, Crime, Sentencing and Courts Act 2022 (c. 32), **ss. 92(1), 208(1)**; S.I. 2022/1187, reg. 4(a) (with Pt. 3)

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### 38 Appeal against disqualification.

- (1) A person disqualified by an order of a magistrates' court under section 34 or 35 of this Act may appeal against the order in the same manner as against a conviction.
- (2) A person disqualified by an order of a court in Scotland may appeal against the order in the same manner as against a sentence.

#### Modifications etc. (not altering text)

C16 S. 38: power to exclude or modify conferred (1.7.1992) by [Road Traffic Act 1988 \(c. 52, SIF 107:1\)](#), [s. 193A\(2\)\(b\)](#) (inserted (1.7.1992) by [Road Traffic Act 1991 \(c. 40, SIF 107:1\)](#), [s. 46\(2\)](#); S.I. 1992/1286, [art. 2](#), Sch.).

### 39 Suspension of disqualification pending appeal.

- (1) Any court in England and Wales (whether a magistrates' court or another) which makes an order disqualifying a person may, if it thinks fit, suspend the disqualification pending an appeal against the order.
- (2) The court by or before which a person disqualified by an order of a court in Scotland was convicted may, if it thinks fit, suspend the disqualification pending an appeal against the order.
- (3) Where a court exercises its power under subsection (1) or (2) above, it must send notice of the suspension to the Secretary of State.
- (4) The notice must be sent in such manner and to such address and must contain such particulars as the Secretary of State may determine.

#### Modifications etc. (not altering text)

C17 S. 39: power to exclude or modify conferred (1.7.1992) by [Road Traffic Act 1988 \(c. 52, SIF 107:1\)](#), [s. 193A\(2\)\(b\)](#) (inserted (1.7.1992) by [Road Traffic Act 1991 \(c. 40, SIF 107:1\)](#), [s. 46\(2\)](#); S.I. 1992/1286, [art. 2](#), Sch.).

### 40 Power of appellate courts in England and Wales to suspend disqualification.

- (1) This section applies where a person has been convicted by or before a court in England and Wales of an offence involving obligatory or discretionary disqualification and has been ordered to be disqualified; and in the following provisions of this section—
  - (a) any reference to a person ordered to be disqualified is to be construed as a reference to a person so convicted and so ordered to be disqualified, and
  - (b) any reference to his sentence includes a reference to the order of disqualification and to any other order made on his conviction and, accordingly, any reference to an appeal against his sentence includes a reference to an appeal against any order forming part of his sentence.
- (2) Where a person ordered to be disqualified—
  - (a) appeals to the Crown Court, or
  - (b) appeals or applies for leave to appeal to the Court of Appeal,

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against his conviction or his sentence, the Crown Court or, as the case may require, the Court of Appeal may, if it thinks fit, suspend the disqualification.

- (3) Where a person ordered to be disqualified has appealed or applied for leave to appeal to the [<sup>F108</sup>Senior Courts] —
- (a) under section 1 of the <sup>M2</sup>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 <sup>M3</sup>Criminal Appeal Act 1968 from any decision of the Court of Appeal which is material to his conviction or sentence,
- the Divisional Court or, as the case may require, the Court of Appeal may, if it thinks fit, suspend the disqualification.
- (4) Where a person ordered to be disqualified makes an application in respect of the decision of the court in question under section 111 of the <sup>M4</sup>Magistrates’ Courts Act 1980 (statement of case by magistrates’ court) or section 28 of the [<sup>F109</sup>Senior Courts Act 1981] (statement of case by Crown Court) the High Court may, if it thinks fit, suspend the disqualification.
- (5) Where a person ordered to be disqualified—
- (a) applies to the High Court for an order of certiorari to remove into the High Court any proceedings of a magistrates’ court or of the Crown Court, being proceedings in or in consequence of which he was convicted or his sentence was passed, or
  - (b) applies to the High Court for leave to make such an application,
- the High Court may, if it thinks fit, suspend the disqualification.
- (6) Any power of a court under the preceding provisions of this section to suspend the disqualification of any person is a power to do so on such terms as the court thinks fit.
- (7) Where, by virtue of this section, a court suspends the disqualification of any person, it must send notice of the suspension to the Secretary of State.
- (8) The notice must be sent in such manner and to such address and must contain such particulars as the Secretary of State may determine.

#### Textual Amendments

**F108** Words in s. 40(3) substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\), s. 148\(1\), Sch. 9 para. 50](#); S.I. 2009/1604, art. 2(d); and said amended words subsequently substituted on the same date by [Constitutional Reform Act 2005 \(c. 4\), s. 148\(1\), Sch. 11 para. 4](#); S.I. 2009/1604, art. 2(d)

**F109** Words in Act substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\), s. 148\(1\), Sch. 11 para. 1\(2\)](#); S.I. 2009/1604, art. 2(d)

#### Modifications etc. (not altering text)

**C18** S. 40: power to exclude or modify conferred (1.7.1992) by [Road Traffic Act 1988 \(c. 52, SIF 107:1\), s. 193A\(2\)\(b\)](#) (inserted (1.7.1992) by [Road Traffic Act 1991 \(c. 40, SIF 107:1\), s. 46\(2\)](#); S.I. 1992/1286, art. 2, Sch.).

#### Marginal Citations

**M2** 1960 c. 65.

**M3** 1968 c. 19.



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**M4** 1980 c. 43.

#### **41** [<sup>F110</sup>**Power of appellate courts in Scotland to suspend disqualification.**]

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

- (a) any reference to a person ordered to be disqualified is to be construed as a reference to a person so convicted and so ordered to be disqualified, and
- (b) any reference to his sentence includes a reference to the order of disqualification and to any other order made on his conviction and, accordingly, any reference to an appeal against his sentence includes a reference to an appeal against any order forming part of his sentence.

(2) Where a person ordered to be disqualified appeals <sup>F111</sup>..., whether on appeal against a summary conviction or a conviction on indictment or his sentence, the court [<sup>F112</sup>hearing the appeal] may, if it thinks fit, suspend the disqualification on such terms as it thinks fit.

The powers conferred by this subsection on the court may be exercised by any single judge of the court.

[<sup>F113</sup>(2A) Where the court hearing the appeal is the Sheriff Appeal Court, the reference in subsection (2) to a single judge of the court is a reference to an Appeal Sheriff.]

(3) Where, by virtue of this section, the [<sup>F114</sup>court hearing the appeal] suspends the disqualification of any person, it must send notice of the suspension to the Secretary of State.

(4) The notice must be sent in such manner and to such address and must contain such particulars as the Secretary of State may determine.

#### **Textual Amendments**

**F110** S. 41 title substituted (S.) (22.9.2015) by [The Courts Reform \(Scotland\) Act 2014 \(Consequential Provisions No. 2\) Order 2015 \(S.S.I. 2015/338\)](#), art. 1, [sch. 2 para. 2\(5\)](#) (with art. 4)

**F111** Words in s. 41(2) repealed (S.) (22.9.2015) by [The Courts Reform \(Scotland\) Act 2014 \(Consequential Provisions No. 2\) Order 2015 \(S.S.I. 2015/338\)](#), art. 1, [sch. 2 para. 2\(2\)\(a\)](#) (with art. 4)

**F112** Words in s. 41(2) inserted (S.) (22.9.2015) by [The Courts Reform \(Scotland\) Act 2014 \(Consequential Provisions No. 2\) Order 2015 \(S.S.I. 2015/338\)](#), art. 1, [sch. 2 para. 2\(2\)\(b\)](#) (with art. 4)

**F113** S. 41(2A) inserted (S.) (22.9.2015) by [The Courts Reform \(Scotland\) Act 2014 \(Consequential Provisions No. 2\) Order 2015 \(S.S.I. 2015/338\)](#), art. 1, [sch. 2 para. 2\(3\)](#) (with art. 4)

**F114** Words in s. 41(3) substituted (S.) (22.9.2015) by [The Courts Reform \(Scotland\) Act 2014 \(Consequential Provisions No. 2\) Order 2015 \(S.S.I. 2015/338\)](#), art. 1, [sch. 2 para. 2\(4\)](#) (with art. 4)

#### **Modifications etc. (not altering text)**

**C19** S. 41: power to exclude or modify conferred (1.7.1992) by [Road Traffic Act 1988 \(c. 52, SIF 107:1\)](#), [s. 193A\(2\)\(b\)](#) (inserted (1.7.1992) by [Road Traffic Act 1991 \(c. 40, SIF 107:1\)](#), [s. 46\(2\)](#); S.I. 1992/1286, [art. 2, Sch.](#)).

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#### <sup>F115</sup>**[41A Suspension of disqualification pending determination of applications under section 34B.**

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

#### **Textual Amendments**

**F115** S. 41A inserted (1.7.1992) by [Road Traffic Act 1991 \(c. 40, SIF 107:1\)](#), s. 48, [Sch. 4 para.97](#); S.I. 1992/1286, art. 2, [Sch.](#)

#### **Modifications etc. (not altering text)**

**C20** Ss. 34 - 48: power to exclude or modify conferred (1.7.1992) by [Road Traffic Act 1988 \(c. 52, SIF 107:1\)](#), [s. 193A\(2\)\(b\)](#) (inserted (1.7.1992) by [Road Traffic Act 1991 \(c. 40, SIF 107:1\)](#), [s. 46\(2\)](#); S.I. 1992/1286, art. 2, [Sch.](#))

#### **42 Removal of disqualification.**

- (1) Subject to the provisions of this section, a person who by an order of a court is disqualified may apply to the court by which the order was made to remove the disqualification.
- (2) On any such application the court may, as it thinks proper having regard to—
  - (a) the character of the person disqualified and his conduct subsequent to the order,
  - (b) the nature of the offence, and
  - (c) any other circumstances of the case,
 either by order remove the disqualification as from such date as may be specified in the order or refuse the application.
- (3) No application shall be made under subsection (1) above for the removal of a disqualification before the expiration of whichever is relevant of the following periods from [<sup>F116</sup>the relevant date], that is—
  - (a) two years, if the disqualification is for less than four years [<sup>F117</sup>(disregarding any extension period)],
  - (b) one half of the [<sup>F118</sup>period of disqualification (disregarding any extension period), if the disqualification is (disregarding any extension period)] 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.

<sup>F119</sup>(3A) In subsection (3) “the relevant date” means—

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- (a) the date of the order imposing the disqualification in question, or
- (b) if the period of the disqualification is extended by an extension period, the date in paragraph (a) postponed by a period equal to that extension period.]

[<sup>F120</sup>(3B) Extension period” means an extension period added pursuant to—

- (a) section 35A or 35C,
- (b) section 248D of the Criminal Procedure (Scotland) Act 1995, or
- (c) section 147A of the Powers of Criminal Courts (Sentencing) Act 2000 [<sup>F121</sup>or section 166 of the Sentencing Code].]

(4) Where an application under subsection (1) above is refused, a further application under that subsection shall not be entertained if made within three months after the date of the refusal.

(5) If under this section a court orders a disqualification to be removed, the court—

- [<sup>F122</sup>(a) must send notice of the order to the Secretary of State,]
- (b) may in any case order the applicant to pay the whole or any part of the costs of the application.

[<sup>F123</sup>(5A) <sup>F124</sup> .....

[ If the disqualification was imposed in respect of an offence involving obligatory <sup>F125</sup>(5AA) endorsement, the Secretary of State must, on receiving notice of an order under subsection [<sup>F126</sup>(5)(a)] above, make any necessary adjustments to the endorsements on the person's driving record to reflect the order.]

(5B) A notice under subsection [<sup>F127</sup>(5)(a)] above must be sent in such manner and to such address, and must contain such particulars, as the Secretary of State may determine.]

(6) The preceding provisions of this section shall not apply where the disqualification was imposed by order under section 36(1) of this Act.

#### Textual Amendments

- F116** Words in s. 42(3) substituted (16.7.2018) by Coroners and Justice Act 2009 (c. 25), s. 182(5), **Sch. 21 para. 90(8)(a)(i)** (with s. 180); S.I. 2018/733, art. 2(c)
- F117** Words in s. 42(3)(a) inserted (16.7.2018) by Coroners and Justice Act 2009 (c. 25), s. 182(5), **Sch. 21 para. 90(8)(a)(ii)** (with s. 180); S.I. 2018/733, art. 2(c)
- F118** Words in s. 42(3)(b) substituted (16.7.2018) by Coroners and Justice Act 2009 (c. 25), s. 182(5), **Sch. 21 para. 90(8)(a)(iii)** (with s. 180); S.I. 2018/733, art. 2(c)
- F119** S. 42(3A) inserted (16.7.2018) by Coroners and Justice Act 2009 (c. 25), s. 182(5), **Sch. 21 para. 90(8)(b)** (with s. 180); S.I. 2018/733, art. 2(c)
- F120** S. 42(3B) inserted (16.7.2018) by Coroners and Justice Act 2009 (c. 25), s. 182(5), **Sch. 21 para. 90(8)(c)** (with s. 180); S.I. 2018/733, art. 2(c)
- F121** Words in s. 42(3B)(c) inserted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 104** (with Sch. 27); S.I. 2020/1236, reg. 2
- F122** S. 42(5)(a) substituted (8.6.2015) by Road Safety Act 2006 (c. 49), s. 61(1)(10), **Sch. 3 para. 40(2)**; S.I. 2015/560, art. 3(a) (with arts. 4-9)
- F123** S. 42(5A)(5B) inserted (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), s. 48, **Sch. 4 para. 98**; S.I. 1992/1286, art. 2, **Sch.**
- F124** S. 42(5A) repealed (8.6.2015) by Road Safety Act 2006 (c. 49), s. 61(1)(10), Sch. 3 para. 40(3), **Sch. 7(4)**; S.I. 2015/560, art. 3 (with arts. 4-9)
- F125** S. 42(5AA) inserted (1.4.2009) by Road Safety Act 2006 (c. 49), s. 61(1)(10), **Sch. 2 para. 8(4)**; S.I. 2008/3164, art. 4(b)

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**F126** Word in s. 42(5AA) substituted (8.6.2015) by Road Safety Act 2006 (c. 49), s. 61(1)(10), **Sch. 3 para. 40(4)**; S.I. 2015/560, art. 3(a) (with arts. 4-9)

**F127** Word in s. 42(5B) substituted (8.6.2015) by Road Safety Act 2006 (c. 49), s. 61(1)(10), **Sch. 3 para. 40(5)**; S.I. 2015/560, art. 3(a) (with arts. 4-9)

**Modifications etc. (not altering text)**

**C21** S. 42 modified by Road Traffic (Consequential Provisions) Act 1988 (c. 54, SIF 107:1), s. 5, **Sch. 4 para. 7(6)**

**C22** S. 42: power to exclude or modify conferred (1.7.1992) by Road Traffic Act 1988 (c. 52, SIF 107:1), **s. 193A(2)(b)** (inserted (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), **s. 46(2)**; S.I. 1992/1286, **art. 2**, Sch.)

**C23** S. 42(5) excluded by Powers of Criminal Courts Act 1973 (c. 62, SIF 39:1), **s. 44(3)(b)** (as amended by Road Traffic (Consequential Provisions) Act 1988 (c. 54, SIF 107:1), s. 4, **Sch. 3 para. 11(c)**)

**C24** S. 42(5) applied with modifications by S.I. 1987/1378, **reg. 25(3)** (as amended by S.I. 1990/842, **reg. 9**)

S. 42(5) applied (with modifications) (12.11.1999) by S.I. 1999/2864, **reg. 80(5)(c)**

**C25** S. 42(6) extended by Road Traffic (Consequential Provisions) Act 1988 (c. 54, SIF 107:1), s. 5, **Sch. 4 para. 7(5)**

**43 Rule for determining end of period of disqualification.**

In determining the expiration of the period for which a person is disqualified by an order of a court made in consequence of a conviction, any time after the conviction during which the disqualification was suspended or he was not disqualified shall be disregarded.

**Modifications etc. (not altering text)**

**C26** S. 43: power to exclude or modify conferred (1.7.1992) by Road Traffic Act 1988 (c. 52, SIF 107:1), **s. 193A(2)(b)** (inserted (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), **s. 46(2)**; S.I. 1992/1286, **art. 2**, Sch.).

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