

*Status: Point in time view as at 31/01/2017.*

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## SCHEDULES

### SCHEDULE 16

#### EXTENSION OF DISQUALIFICATION FOR DRIVING

##### *Road Traffic Offenders Act 1988 (c. 53)*

- 2 (1) The Road Traffic Offenders Act 1988 is amended as follows.
- (2) After section 35 insert—

##### **“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 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;
  - (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 that Act calculated after that term has been reduced by any relevant discount;

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- (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 calculated after that term has been reduced by any relevant discount;
  - (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 calculated after that sentence has been reduced by any relevant discount.
- (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) The “relevant discount” is the total number of days to count as time served by virtue of a direction under—
- (a) section 240 of the Criminal Justice Act 2003 (crediting periods of remand in custody), or
  - (b) section 240A of that Act (crediting periods of remand on bail).
- (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.
- (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”).
- (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.
- (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.

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(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.”

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

“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.

(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.”

(3) After section 35B (as inserted by sub-paragraph (2)) insert—

### **“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—

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- (a) in the case of a life prisoner, a period equal to the punishment part of the life sentence;
  - (b) in the case of a custody and community prisoner, a period equal to half the custody part of the sentence of imprisonment;
  - (c) in the case of a person serving an extended sentence, a period equal to half the confinement term;
  - (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 a different proportion (“the new proportion”) to be substituted for the proportion of a prisoner's sentence referred to in section 6(4)(a) of the Custodial Sentences and Weapons (Scotland) Act 2007 (asp 17) (“the 2007 Act”).
- (8) The Secretary of State may by order provide that the proportion specified in subsection (4)(b) and (c) 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.
- (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 section 7 of the 2007 Act;
  - “confinement term” has the meaning given by section 210A(2) (a) of the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”);
  - “custody and community prisoner” has the meaning given by section 4 of the 2007 Act;
  - “custody part” has the meaning given by section 6(3) of the 2007 Act;
  - “extended sentence” has the meaning given by section 210A of the 1995 Act;
  - “life prisoner” has the meaning given by section 4 of the 2007 Act;
  - “punishment part” has the meaning given by section 4 of the 2007 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, 207 or 208 of the 1995 Act.

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### **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.”

#### **Commencement Information**

**II** Sch. 16 para. 2(1)(2) in force at 13.4.2015 by [S.I. 2015/819](#), [art. 2\(b\)](#)

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