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## STATUTORY INSTRUMENTS

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# 1996 No. 1320

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

### PART III **N.I.**

#### SENTENCE

##### *Introductory*

#### **Production of licence** **N.I.**

**29.**—(1) Where a person who is the holder of a licence is convicted of an offence involving obligatory or discretionary disqualification, and a court proposes to make an order disqualifying him or an order under Article 49, the court must, unless it has already received them, require the licence and its counterpart to be produced to it.

(2) If the holder of the licence has not caused it and its counterpart to be delivered, or posted it and its counterpart, in accordance with Article 11 and does not produce it and its counterpart as required under this Article or under Article 8 of the Criminal Justice (Northern Ireland) Order 1980<sup>F1</sup> or if the holder of the licence does not produce it and its counterpart as required by Article 37A of the Child Support (Northern Ireland) Order 1991, then,] unless he satisfies the court that he has applied for a new licence and has not received it—

- (a) he is guilty of an offence, and
- (b) the licence shall be suspended from the time when its production was required until it and its counterpart are produced to the court and shall, while suspended, be of no effect.

(3) Paragraph (2) does not apply where the holder of the licence—

- (a) has caused a current receipt for the licence and its counterpart issued under Article 62 to be delivered to the clerk of the court before which the proceedings were brought not later than the day before the date appointed for the hearing, or
- (b) has posted such a receipt, at such time that in the ordinary course of post it would be delivered not later than that day, in a letter duly addressed to the clerk and either registered or sent by the recorded delivery service, or
- (c) surrenders such a receipt to the court at the hearing,

and produces the licence and its counterpart to the court immediately on their return.

**F1** 2000 c. 4 (NI)

#### **Penalty points to be attributed to an offence** **N.I.**

**30.**—(1) Where a person is convicted of an offence involving obligatory endorsement, then, subject to the following provisions of this Article, the number of penalty points to be attributed to the offence is—

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- (a) the number shown in relation to the offence in the last column of Part I or Part II of Schedule 1, or
  - (b) where a range of numbers is shown, a number within that range.
- (2) Where a person is convicted of an offence committed by aiding, abetting, counselling or procuring, or inciting to the commission of, an offence involving obligatory disqualification, then, subject to the following provisions of this Article, the number of penalty points to be attributed to the offence is 10.
- (3) Where a range of numbers is shown in the last column of Part I or Part II of Schedule 1 in relation to an offence, the lowest number in the range is the number of penalty points to be attributed to the offence for the purposes of Article 63(5) or 82(4).
- (4) Where a person is convicted (whether on the same occasion or not) of 2 or more offences committed on the same occasion and involving obligatory endorsement, the total number of penalty points to be attributed to them is the number or highest number that would be attributed on a conviction of one of them (so that if the convictions are on different occasions the number of penalty points to be attributed to the offences on the later occasion or occasions shall be restricted accordingly).
- (5) In a case where (apart from this paragraph) paragraph (4) would apply to 2 or more offences, the court may if it thinks fit determine that that paragraph shall not apply to the offences (or, where 3 or more offences are concerned, to any one or more of them).
- (6) Where a court makes such a determination it shall state the reasons for the determination in the order of the court.
- (7) The Department may by order—
- (a) alter a number or range of numbers shown in relation to an offence in the last column of Part I or Part II of Schedule 1 (by substituting one number or range for another, a number for a range, or a range for a number), and
  - (b) alter the number of penalty points shown in paragraph (2);
- and an order under this paragraph may provide for different numbers or ranges of numbers to be shown in relation to the same offence committed in different circumstances.
- (8) An order under paragraph (7) shall be made subject to affirmative resolution.

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

**C1** Art. 30(2) modified (1.10.2008) by Serious Crime Act 2007 (c. 27), ss. 63(1), 94(1), **Sch. 6 para. 32(a)** (with s. 91(1), Sch. 13 para. 5); S.I. 2008/2504, **art. 2(a)(f)(g)**

**Penalty points to be taken into account on conviction** **N.I.**

- 31.**—(1) Where a person is convicted of an offence involving obligatory endorsement, the penalty points to be taken into account on that occasion are (subject to paragraph (2))—
- (a) any that are to be attributed to the offence or offences of which he is convicted, disregarding any offence in respect of which an order under Article 35 is made, and
  - (b) any that were on a previous occasion ordered to be endorsed on the counterpart of any licence held by him, unless the offender has since that occasion and before the conviction been disqualified under Article 40.
- (2) If any of the offences was committed more than 3 years before another, the penalty points in respect of that offence shall not be added to those in respect of the other.

**Penalty points: modification where fixed penalty also in question** **N.I.**

- 32.**—(1) Articles 30 and 31 shall have effect subject to this Article in any case where—
- (a) a person is convicted of an offence involving obligatory endorsement, and
  - (b) the court is satisfied that the counterpart of his licence has been or is liable to be endorsed under Article 63 or 82 in respect of an offence (referred to in this Article as the “connected offence”) committed on the same occasion as the offence of which he is convicted.
- (2) The number of penalty points to be attributed to the offence of which he is convicted is—
- (a) the number of penalty points to be attributed to that offence under Article 30 apart from this Article, less
  - (b) the number of penalty points required to be endorsed on the counterpart of his licence under Article 63 or 82 in respect of the connected offence (except so far as they have already been deducted by virtue of this sub-paragraph).

PROSPECTIVE

**[F2] Reduced penalty points for attendance on course** **N.I.**

- 32A.**—(1) This Article applies where—
- (a) a person is convicted of a specified offence by or before a court,
  - (b) penalty points are to be attributed to the offence and the court does not order him to be disqualified, and
  - (c) at least 7 but no more than 11 penalty points are to be taken into account on the occasion of the conviction.
- (2) In this Article “specified offence” means—
- (a) an offence under Article 20(4) of the Roads (Northern Ireland) Order 1993 (use of special road contrary to regulations),
  - (b) an offence under Article 12 of the Order of 1995 (careless, and inconsiderate, driving),
  - (c) an offence under Article 50 of the Order of 1995 (contravention of traffic signs),
  - (d) an offence under Article 43(1) of the Road Traffic Regulation (Northern Ireland) Order 1997 (contravening speed limit), or
  - (e) an offence under Article 7 of the Road Traffic Regulation (Northern Ireland) Order 1997 committed by contravening a temporary speed restriction under paragraph (3)(b) of that Article.
- (3) The Department may by order amend paragraph (2) by making additions to or deletions from the list of offences for the time being set out there.
- (4) Where this Article applies, the court may make an order that 3 of the penalty points attributed to the offence (or all of them if 3 or fewer are so attributed) shall not be taken into account under Article 31(1)(b) on the occasion of any conviction of an offence after the end of the period of 12 months beginning with the date of the order if, by the relevant date, the offender completes an approved course specified in the order.
- (5) In paragraph (4)—
- “an approved course” means a course approved by the Department for the purposes of this Article in relation to the description of offence of which the offender is convicted; and
  - “the relevant date” means such date, no later than 10 months after the day on which the order is made, as is specified in the order.

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(6) A court shall not make an order under this Article in the case of an offender convicted of an offence if—

- (a) the offender has, during the period of 3 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 Article or Article 36 on conviction of that offence, or
- (b) the offence was committed during his probationary period.

(7) A court shall not make an order under this Article in the case of an offender unless—

- (a) it is satisfied that a place on the course specified in the order will be available for the offender,
- (b) the offender appears to the court to be of or over the age of 17,
- (c) the court has 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 agrees that the order should be made.

**F2** Arts. 32A-32E inserted (prosp.) by Road Traffic (Northern Ireland) Order 2007 (S.I. 2007/916 (N.I. 10)), arts. 1(3), 10(3)

PROSPECTIVE

### Certificates of completion of courses **N.I.**

**32B.**—(1) An offender shall only be regarded for the purposes of Article 32A as having completed a course satisfactorily if a certificate that he has done so is received by the proper officer of the supervising court.

(2) A course provider shall give a certificate under paragraph (1) to the offender not later than 14 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.

(3) The certificate under paragraph (1) 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 Department.

(4) Where a course provider decides not to give the certificate under paragraph (1) 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 14 days after the date specified in the order as the latest date for completion of the course.

(5) An offender to whom a notice is given under paragraph (4) 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 or the relevant local court) to either the supervising court or the relevant local court, for a declaration that the course provider's decision not to give a certificate under paragraph (1) was contrary to paragraph (2).

(6) If the court grants an application under paragraph (5), Article 32A shall have effect as if the certificate had been duly received by the proper officer of the supervising court.

(7) If 14 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 paragraph (1) nor a notice under paragraph (4), 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 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.

(8) If the court grants an application under paragraph (7), Article 32A shall have effect as if the certificate had been duly received by the proper officer of the supervising court.

(9) A notice under paragraph (4) shall specify the ground on which it is given; and the Department may by regulations make provision as to the form of notices under that paragraph and as to the circumstances in which they are to be treated as given.

(10) Where the proper officer of a court receives a certificate under paragraph (1), or a court grants an application under paragraph (5) or (7), the proper officer or court (as the case may be) must send notice of that fact to the Department; and the notice must be sent in such manner and to such address, and must contain such particulars as the Department may determine.

**F2** Arts. 32A-32E inserted (prosp.) by Road Traffic (Northern Ireland) Order 2007 (S.I. 2007/916 (N.I. 10)), arts. 1(3), 10(3)

PROSPECTIVE

### Approval of courses **N.I.**

**32C.**—(1) If an application is made to the Department for the approval of a course for the purposes of Article 32A, the Department must decide whether to grant or refuse the application.

(2) In reaching that decision, the Department must have regard to—

- (a) the nature of the course, and
- (b) 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 Department.

(4) An approval of a course is for the period specified by the Department (which must not exceed 7 years), subject to withdrawal of approval.

(5) Regulations made by the Department 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 in connection with approvals, of fees of a prescribed amount,
- (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,

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- (f) for an appeal to lie to a court of summary jurisdiction 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 Department to make available (with or without charge) information about courses and course providers.

**F2** Arts. 32A-32E inserted (prosp.) by Road Traffic (Northern Ireland) Order 2007 (S.I. 2007/916 (N.I. 10)), arts. 1(3), 10(3)

PROSPECTIVE

### Courses in Great Britain **N.I.**

**32D.**—(1) The Department may enter into arrangements with persons in Great Britain who provide courses which are approved courses within the meaning of section 30A(5) of the Road Traffic Offenders Act 1988 for the purpose of treating those courses as approved courses within the meaning of Articles 32A to 32E and in this Article such courses in respect of which such arrangements have been entered into shall be known as “recognised courses”.

(2) Such arrangements may include provision for any matters for which provision is made in Articles 32A to 32E in relation to approved courses.

(3) A court—

- (a) may treat recognised courses as approved courses for the purposes of Article 32A,
- (b) may treat any certificates received from course providers of recognised courses as certificates received from course providers of approved courses for the purposes of Article 32B,
- (c) may treat a notice of such course provider not to give a certificate as a notice within the meaning of Article 32B(4) for the purposes of Article 32B(5), (6) and (10), provided that, the offender may only appeal to the supervising court,
- (d) may treat a failure to give such a notice and a failure to give such a certificate in the same way as it would treat such a failure under Article 32B(7) for the purposes of Article 32B(7), (8) and (10), provided that, the offender may only appeal to the supervising court.

(4) Where a court has made an order in respect of a person under Article 32A, that person may apply to the court to vary the order by substituting a recognised course for the course specified in the order, and if the court grants that application, it shall vary the order accordingly.

(5) The power to prescribe periods by rules of court under Article 32B(5) and (7) shall include power to prescribe periods for the purposes of paragraph (2)(c) and (d) of this Article.

(6) The Department may by regulations make such further provision in respect of recognised courses as it considers necessary or expedient.

**F2** Arts. 32A-32E inserted (prosp.) by Road Traffic (Northern Ireland) Order 2007 (S.I. 2007/916 (N.I. 10)), arts. 1(3), 10(3)

PROSPECTIVE

**Provisions supplementary to Articles 32A to 32D** **N.I.**

**32E.**—(1) The Department may issue guidance to course providers, or to any category of course provider, as to the conduct of courses approved for the purposes of Article 32; and—

- (a) course providers shall have regard to any guidance given to them under this paragraph, and
  - (b) in determining for the purposes of Article 32B whether any instructions or requirements of a course provider were reasonable, a court shall have regard to any guidance given to him under this paragraph.
- (2) The Department may by regulations make provision—
- (a) amending Article 32A(1)(c) by substituting for the lower number of penalty points for the time being specified there a different number of penalty points, or
  - (b) amending Article 32A(6)(a) by substituting for the period for the time being specified there a different period.

(3) In Articles 32A to 32C and this Article—

“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 Article 2 of the Road Traffic (New Drivers) (Northern Ireland) Order 1998;

“proper officer” means—

- (a) in relation to a magistrates' court, the clerk of petty sessions for the petty sessions district for which the court acts, and
- (b) otherwise, the chief clerk;

“relevant local court”, in relation to an order made under Article 32A in the case of an offender, means a magistrates' court acting for the petty sessions district in which the offender resides;

“rules of court” means—

- (a) in relation to an application to a magistrates' court, magistrates' court rules, and
- (b) in relation to an application to the Crown Court, Crown Court rules;

“supervising court”, in relation to an order under Article 32A means—

- (a) if the Crown Court made the order, the Crown Court, and
- (b) otherwise a magistrates' court acting in the same petty sessions district as the court which made the order.

(4) Orders or regulations made by the Department under Article 32A to 32D or this Article may include such incidental or supplementary provision as appears to the Department to be necessary or expedient.

(5) Orders made under Article 32A(3) and regulations made under this Article shall be subject to affirmative resolution.

(6) Regulations made under Article 32B, 32C or 32D shall be subject to negative resolution.]

**F2** Arts. 32A-32E inserted (prosp.) by Road Traffic (Northern Ireland) Order 2007 (S.I. 2007/916 (N.I. 10)), arts. 1(3), **10(3)**

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### **Court may take particulars endorsed on licence into consideration** **N.I.**

**33.** Where a person is convicted of an offence involving obligatory or discretionary disqualification and his licence and its counterpart are produced to the court—

- (a) any existing endorsement on the counterpart of his licence is prima facie evidence of the matters endorsed, and
- (b) the court may, in determining what order to make in pursuance of the conviction, take those matters into consideration.

### *Fine and imprisonment*

### **Fine and imprisonment** **N.I.**

**34.**—(1) Where a person is convicted of an offence against a provision of the Road Traffic Orders specified in column 1 of Part I of Schedule 1 or regulations made under any such provision, the maximum punishment by way of fine or imprisonment which may be imposed on him is that shown in column 4 against the offence; and (where appropriate) the circumstances or the mode of trial are there specified.

(2) Any reference in column 4 of that Part to a period of years or months is to be construed as a reference to a term of imprisonment of that duration.

### *Disqualification*

### **Disqualification for certain offences** **N.I.**

**35.**—(1) Where a person is convicted of an offence involving obligatory disqualification, the court must order him to be disqualified for such period not less than 12 months as the court thinks fit unless the court for special reasons thinks fit to order him to be disqualified for a shorter period or not to order him to be disqualified.

[<sup>F3</sup>(1A) Where a person is convicted of an offence under Article 172A or 172B of the 1981 Order (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 paragraph (1).]

(2) Where a person is convicted of an offence involving discretionary disqualification, and either—

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

the court may order him to be disqualified for such period as the court thinks fit.

(3) Where a person convicted of an offence under any of the following provisions of the Order of 1995, that is—

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

[<sup>F4</sup>(e) Article 18A(6) (failing to allow a specimen to be subjected to laboratory test) where that is an offence involving obligatory disqualification;]

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

This paragraph is subject to Article 96.

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

- (a) a person convicted of—
  - (i) manslaughter, or
  - (ii) an offence under Article 9 of the Order of 1995 (causing death, or grievous bodily injury, by dangerous driving), or
  - (iii) an offence under Article 14 of that Order (causing death, or grievous bodily injury, by careless driving when under the influence of drink or drugs), and
- (b) a person on whom more than one disqualification for a fixed period of 56 days or more has been imposed within the 3 years immediately preceding the commission of the offence.

[<sup>F5</sup>(4A) Where a person convicted of an offence under Article 54 of the Order of 1995 (using vehicle in dangerous condition etc.) has within the 3 years immediately preceding the commission of the offence been convicted of any such offence, paragraph (1) shall apply in relation to him as if the reference to 12 months were a reference to 6 months.]

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

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

(7) This Article is subject to Article 53.

**F3** 2004 NI 15

**F4** 2005 NI 15

**F5** Art. 35(4A) inserted (27.6.2007) by Road Traffic (Northern Ireland) Order 2007 (S.I. 2007/916 (N.I. 10)), arts. 1(3), 9(1); S.R. 2007/302, art. 2, Sch.

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

**C2** Art. 35(6) modified (1.10.2008) by Serious Crime Act 2007 (c. 27), ss. 63(1), 94(1), Sch. 6 para. 32(b) (with Sch. 13 para. 5); S.I. 2008/2504, art. 2(a)(f)(g)

**Reduced disqualification period for attendance on courses** **N.I.**

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

- (a) a person is convicted of an offence under any of the following provisions of the Order of 1995, namely Article 14 (causing death, or grievous bodily injury, by careless driving when under influence of drink or drugs), Article 15 (driving or being in charge when under influence of drink or drugs), Article 16 (driving or being in charge with excess alcohol) or Article 18 (failing to provide a specimen), and
- (b) the court makes an order under Article 35 of this Order disqualifying him for a period of not less than 12 months.

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

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

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

- (a) it is satisfied that a place on the course specified in the order will be available for the offender,
- (b) the offender appears to the court to be of or over the age of 17,
- (c) the court has explained the effect of the order to the offender in ordinary language, and has informed him of the amount of the fees for the course and of the requirement that he must pay them before beginning the course, and
- (d) the offender has agreed that the order should be made.

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

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

### **Certificates of completion of courses** **N.I.**

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

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

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

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

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

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

(7) If 14 days after the date specified in the order as the latest date for completion of the course the course organiser has given neither the certificate mentioned in paragraph (1) nor a notice under

paragraph (5), the offender may, within such period as may be prescribed by magistrates' courts rules, apply to the supervising court for a declaration that the course organiser is in default; and if the court grants the application Article 36 shall have effect as if the certificate had been duly received by the clerk of the court.

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

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

PROSPECTIVE

#### [<sup>F6</sup>Approval of courses **N.I.**]

**37A.**—(1) If an application is made to the Department for the approval of a course for the purposes of Article 36, the Department must decide whether to grant or refuse the application.

(2) In reaching that decision, the Department must have regard to—

- (a) the nature of the course, and
- (b) 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 Department.

(4) An approval of a course is for the period specified by the Department (which must not exceed 7 years), subject to withdrawal of approval.

(5) Regulations made by the Department 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 in connection with approvals, of fees of a prescribed amount,
- (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 a court of summary jurisdiction 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 Department to make available (with or without charge) information about courses and course providers.]

**F6** Arts. 36, 37, 37A, 37B, 38 substituted (prosp.) for arts. 36-39 by Road Traffic (Northern Ireland) Order 2007 (S.I. 2007/916 (N.I. 10)), arts. 1(3), 11(1)

*Status: Point in time view as at 16/07/2008. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: The Road Traffic Offenders (Northern Ireland) Order 1996, PART III is up to date with all changes known to be in force on or before 21 September 2024. There are changes that may be brought into force at a future date.*

*Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

PROSPECTIVE

### [<sup>F7</sup>Courses in Great Britain **N.I.**

**37B.**—(1) The Department may enter into arrangements with persons in Great Britain who provide courses which are approved courses within the meaning of section 34A(6) of the Road Traffic Offenders Act 1988 for the purpose of treating those courses as approved courses within the meaning of Articles 36 to 38 and in this Article such courses in respect of which such arrangements have been entered into shall be known as “recognised courses”.

(2) Such arrangements may include provision for any matters for which provision is made in Articles 36 to 38 in relation to approved courses.

(3) A court—

- (a) may treat recognised courses as approved courses for the purposes of Article 36,
- (b) may treat any certificates received from course providers of recognised courses as certificates received from course providers of approved courses for the purposes of Article 37,
- (c) may treat a notice of such course provider not to give a certificate as a notice within the meaning of Article 37(5) for the purposes of Article 37(6), (7) and (11), provided that, the offender may only appeal to the supervising court,
- (d) may treat a failure to give such a notice and a failure to give such a certificate in the same way as it would treat such a failure under Article 37(8) for the purposes of Article 37(8), (9) and (11), provided that, the offender may only appeal to the supervising court.

(4) Where a court has made an order in respect of a person under Article 36, that person may apply to the court to vary the order by substituting a recognised course for the course specified in the order, and if the court grants that application, it shall vary the order accordingly.

(5) The power to prescribe periods by rules of court under Article 37(6) and (8) shall include power to prescribe periods for the purposes of paragraph (2)(c) and (d) of this Article.

(6) The Department may by regulations make such further provision in respect of recognised courses as it considers necessary or expedient.]

**F7** Arts. 36, 37, 37A, 37B, 38 substituted (prosp.) for arts. 36-39 by [Road Traffic \(Northern Ireland\) Order 2007 \(S.I. 2007/916 \(N.I. 10\)\)](#), arts. 1(3), **11(1)**

### Provisions supplementary to Articles 36 and 37 **N.I.**

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

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

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

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

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

- (3) Regulations under Article 37 or this Article—
- (a) may include such incidental or supplementary provision as appears to the Department to be necessary or expedient; and
  - (b) shall be subject to negative resolution.

PROSPECTIVE

**[<sup>F8</sup>Reduced disqualification period: alcohol ignition interlock programme orders N.I.**

**38A.**—(1) This Article applies where—

- (a) a person is convicted of a relevant drink offence by or before a court,
- (b) he has committed another relevant drink offence at any time during the period of 10 years ending with the date of the conviction
- (c) the court makes an order under Article 35 but does not make an order under Article 36, and
- (d) the period stated by the court as that for which, apart from this Article, he would be disqualified (“the unreduced period”) is not less than 2 years.

(2) In this Article “relevant drink offence” means—

- (a) an offence under sub-paragraph (a) of paragraph (1) of Article 14 of the Order of 1995 (causing death or grievous bodily injury by careless driving when unfit to drive through drink) committed when unfit to drive through drink,
- (b) an offence under sub-paragraph (b) of that paragraph (causing death by careless driving with excess alcohol),
- (c) an offence under sub-paragraph (c) of that paragraph (failing to provide a specimen) where the specimen is required in connection with drink or consumption of alcohol,
- (d) an offence under Article 15 of that Order (driving or being in charge when under influence of drink) committed by reason of unfitness through drink,
- (e) an offence under Article 16(1) of that Order (driving or being in charge with excess alcohol),
- (f) an offence under Article 18(7) of that Order (failing to provide a specimen) committed in the course of an investigation into an offence within any of the preceding sub-paragraphs, or
- (g) an offence under Article 18A(6) of that Order (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 sub-paragraphs.

(3) Where this Article applies, the court may specify a lesser period of disqualification (“the reduced period”) if it also makes an order (an “alcohol ignition interlock programme order”) requiring the offender to comply with the alcohol ignition interlock conditions.

(4) The difference between the unreduced period and the reduced period shall be a period specified in the order of—

- (a) not less than 12 months, and

*Status: Point in time view as at 16/07/2008. This version of this part contains provisions that are not valid for this point in time.*

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(b) not more than one half of the unreduced period.

(5) If the offender contravenes the alcohol ignition interlock conditions, a further order under Article 35 disqualifying him for the rest of the unreduced period is to be treated as having been made by the court immediately before the contravention.

(6) “The alcohol ignition interlock conditions” are that the offender—

- (a) must participate fully in an approved alcohol ignition interlock programme specified in the order during such part of the unreduced period as is so specified, an
- (b) during the part of that period following the reduced period, must not drive a motor vehicle unless it is fitted with an alcohol ignition interlock in good working order and must not drive a motor vehicle which is so fitted when not using the alcohol ignition interlock properly.

(7) A court shall not make an alcohol ignition interlock programme order in the case of an offender unless—

- (a) the court is satisfied that a place on the approved alcohol ignition interlock programme 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 the amount of the fees which he is required to pay for the programme and when he must pay them, and
- (d) the offender has agreed that the order should be made.

(8) For the purposes of this Article an “approved alcohol ignition interlock programme” is a programme approved by the Department and involving the provision of an alcohol ignition interlock for use by the offender, training in its use and other education and counselling relating to the consumption of alcohol and driving.

(9) For the purposes of this Article “alcohol ignition interlock” means a device—

- (a) of a type approved by the Department, and
- (b) designed to be fitted to a motor vehicle with the purpose of preventing the driving of the vehicle by a person who does not, both before starting driving the vehicle and at regular intervals while driving it, provide specimens of breath in which the proportion of alcohol is likely not to exceed the limit specified in paragraph (10).

(10) That limit is 9 microgrammes of alcohol in 100 millilitres of breath or such other proportion of alcohol to breath as the Department may by regulations prescribe.

(11) For the purposes of this Article an offender uses an alcohol ignition interlock properly if (and only if) he is complying with all the instructions given to him about its use as part of the approved alcohol ignition interlock programme.

(12) Where an alcohol ignition interlock is fitted to a motor vehicle as part of an approved alcohol ignition interlock programme relating to an offender, a person commits an offence if—

- (a) he interferes with the alcohol ignition interlock with intent to cause it not to function or not to function properly, or
- (b) he is a person other than the offender and provides or attempts to provide a specimen of breath for the purposes of the alcohol ignition interlock with intent to enable the driving (or continued driving) of the vehicle by the offender

**F8** Arts. 38A-38E inserted (prosp.) by [Criminal Justice \(Northern Ireland\) Order 2008 \(S.I. 2008/1216 \(N.I. 1\)\)](#), arts. 1(4), **60(1)** (with art. 61)

PROSPECTIVE

### Certificates of failing fully to participate **N.I.**

**38B.**—(1) An offender shall be regarded for the purposes of Article 38A as not fully participating in an approved alcohol ignition interlock programme if (and only if) a certificate that that is so is received by the proper officer of the supervising court.

(2) A certificate under paragraph (1) may be given if (and only if) the offender has failed—

- (a) to make due payment of fees for the programme,
- (b) to attend for training, education or counselling forming part of the programme in accordance with the programme provider's reasonable instructions,
- (c) to attend at a place specified by the programme provider for the monitoring and maintenance of the alcohol ignition interlock, at a time specified by the programme provider or a person with whom the programme provider has made arrangements for its monitoring and maintenance, or
- (d) to comply with any other reasonable requirement of the programme provider.

(3) A certificate under paragraph (1) is to be given by the programme 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 Department.

(4) Where a programme provider decides to give a certificate under paragraph (1), he shall give written notice of the decision to the offender as soon as possible.

(5) An offender to whom a notice is given under paragraph (4) 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 or the relevant local court) to either the supervising court or the relevant local court, for a declaration that the programme provider has given the certificate under paragraph (1) in contravention of paragraph (2).

(6) If the court grants the application, Article 38A shall have effect as if the certificate had not been duly received by the proper officer of the supervising court.

(7) A notice under paragraph (4) shall specify the ground on which it is given; and the Department may by regulations make provision as to the form of notices under that paragraph and as to the circumstances in which they are to be treated as given.

(8) Where the proper officer of a court receives a certificate under paragraph (1), or a court grants an application under paragraph (5), the proper officer or court must send notice of that fact to the Department; and the notice must be sent in such manner and to such address, and must contain such particulars, as the Department may determine

**F8** Arts. 38A-38E inserted (prosp.) by [Criminal Justice \(Northern Ireland\) Order 2008 \(S.I. 2008/1216 \(N.I. 1\)\)](#), arts. 1(4), **60(1)** (with art. 61)

PROSPECTIVE

### Approval of programmes **N.I.**

**38C.**—(1) If an application is made to the Department for the approval of a programme for the purposes of Article 38A, the Department must decide whether to grant or refuse the application.

(2) In reaching that decision the Department must have regard to—

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- (a) the nature of the programme, and
- (b) whether the programme provider is an appropriate person to provide the programme 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 programme may be approved subject to conditions specified by the Department.

(4) An approval of a programme is for the period specified by the Department (which must not exceed 7 years), subject to withdrawal of approval.

(5) Regulations made by the Department may make provision in relation to the approval of programmes 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 programme and by when they are to be paid,
- (d) for the monitoring of programmes and programme providers,
- (e) in relation to withdrawing approval,
- (f) for an appeal to lie to a court of summary jurisdiction 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 Department to make available (with or without charge) information about programmes and programme providers.

**F8** Arts. 38A-38E inserted (prosp.) by [Criminal Justice \(Northern Ireland\) Order 2008 \(S.I. 2008/1216 \(N.I. 1\)\)](#), arts. 1(4), **60(1)** (with art. 61)

PROSPECTIVE

### Programmes in Great Britain **N.I.**

**38D.**—(1) The Department may enter into arrangements with persons in Great Britain who provide programmes which are approved programmes within the meaning of section 34D(8) of the Road Traffic Offenders Act 1988 for the purpose of treating those programmes as approved programmes within the meaning of Articles 38A to 38E of this Order, and in this Article such programmes in respect of which such arrangements have been entered into are referred to as “recognised programmes”

(2) Such arrangements may include provision for any matters for which provision is made in Articles 38A to 38E in relation to approved programmes.

(3) A court—

- (a) may treat recognised programmes as approved programmes for the purposes of Article 38A,
- (b) may treat any certificates received from programme providers of recognised programmes as certificates received from programme providers of approved programmes for the purposes of Article 38B.

(4) Where a court has made an order in respect of a person under Article 38A, that person may apply to the court to vary the order by substituting a recognised programme for the programme specified in the order, and if the court grants that application, it shall vary the order accordingly.

(5) The Department may by regulations make such further provision in respect of recognised programmes as it considers necessary or expedient

**F8** Arts. 38A-38E inserted (prosp.) by Criminal Justice (Northern Ireland) Order 2008 (S.I. 2008/1216 (N.I. 1)), arts. 1(4), **60(1)** (with art. 61)

PROSPECTIVE

### Provisions supplementary to Articles 38A to 38D **N.I.**

**38E.**—(1) The Department may issue guidance to programme providers, or to any category of programme provider, as to the conduct of programmes approved for the purposes of Article 38A; and—

- (a) programme providers shall have regard to any guidance given to them under this paragraph, and
  - (b) in determining for the purposes of Article 38B whether any instructions or requirements of a programme provider were reasonable, a court shall have regard to any guidance given to him under this paragraph.
- (2) The Department may by regulations make provision—
- (a) amending Article 38A(1)(b) by substituting for the period for the time being specified there a different period,
  - (b) amending Article 38A(1)(d) by substituting for the period for the time being specified there a different period, or
  - (c) amending Article 38A(4) 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).

(3) In Articles 38A to 38D and this Article—

“contravention” includes failure to comply;

“programme provider”, in relation to an alcohol ignition interlock programme, means the person by whom it is, or is to be, provided;

“proper officer” means—

- (a) in relation to a magistrates' court, the clerk of petty sessions for the petty sessions district for which the court acts, an
- (b) otherwise, the chief clerk;

“relevant local court”, in relation to an alcohol ignition interlock programme order in the case of an offender, means a magistrates' court acting for the petty sessions district in which the offender resides,

“rules of court” means—

- (a) in relation to an application to a magistrates' court, magistrates' court rules; and
- (b) in relation to an application to the Crown Court, Crown Court rules;

“supervising court”, in relation to an alcohol ignition interlock programme order, means—

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- (a) if the Crown Court made the order, the Crown Court; and
- (b) otherwise a magistrates' court acting for the same petty sessions district as the court which made the order.

(4) Regulations under Article 38A, 38B, 38C or 38D or this Article may include such incidental or supplementary provision as appears to the Department to be necessary or expedient.

(5) Regulations under Article 38A, 38B, 38C or 38D shall be subject to negative resolution.

(6) No regulations shall be made under this Article unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.]

**F8** Arts. 38A-38E inserted (prosp.) by Criminal Justice (Northern Ireland) Order 2008 (S.I. 2008/1216 (N.I. 1)), arts. 1(4), **60(1)** (with art. 61)

### Experimental period for Article 36 **N.I.**

**39**<sup>F9</sup>.—(1) Subject to the following provisions, no order shall be made under Article 36 after the end of 2000 or such later time as may be specified in an order made by the Department.

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

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

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

(4) During the experimental period—

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

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

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

(7) An order under paragraph (6)—

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

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

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

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

F9 mod. by SR 2000/395

## Disqualification for repeated offences **N.I.**

40.—(1) Where—

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

the court must order him to be disqualified for not less than the minimum period unless the court is satisfied, having regard to all the circumstances, that there are grounds for mitigating the normal consequences of the conviction and thinks fit to order him to be disqualified for a shorter period or not to order him to be disqualified.

(2) Paragraph (1) applies to—

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

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

- (a) 6 months if no previous disqualification imposed on the offender is to be taken into account, and
- (b) one year if one, and 2 years if more than one, such disqualification is to be taken into account,

and a previous disqualification imposed on an offender is to be taken into account if it was for a fixed period of 56 days or more and was imposed within the 3 years immediately preceding the commission of the latest offence in respect of which penalty points are taken into account under Article 31.

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

- (a) not more than one disqualification shall be imposed on him under paragraph (1),
- (b) in determining the period of the disqualification the court must take into account all the offences, and
- (c) for the purposes of any appeal any disqualification imposed under paragraph (1) shall be treated as an order made on the conviction of each of the offences.

(5) No account is to be taken under paragraph (1) of any of the following circumstances—

- (a) any circumstances that are alleged to make the offence or any of the offences not a serious one,
- (b) hardship, other than exceptional hardship, or
- (c) any circumstances which, within the 3 years immediately preceding the conviction, have been taken into account under that paragraph in ordering the offender to be disqualified for a shorter period or not ordering him to be disqualified.

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

*Status: Point in time view as at 16/07/2008. This version of this part contains provisions that are not valid for this point in time.*

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

(8) This Article is subject to Article 53.

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

**C3** Art. 40(7) modified (1.10.2008) by [Serious Crime Act 2007 \(c. 27\)](#), ss. 63(1), 94(1), [Sch. 6 para. 32\(c\)](#) (with [Sch. 13 para. 5](#)); [S.I. 2008/2504](#), [art. 2\(a\)\(f\)\(g\)](#)

PROSPECTIVE

**[<sup>F10</sup>Extension of disqualification where custodial sentence also imposed N.I.]**

**40A.**—(1) This Article applies where a person is convicted of an offence for which the court—

- (a) imposes a custodial sentence, and
- (b) orders the person to be disqualified under Article 35 or 40.

(2) The order under Article 35 or 40 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 Article, the court would have disqualified the person under Article 35 or 40.

(4) The appropriate extension period is—

- (a) where a court imposes a sentence under Article 45(2) of the Criminal Justice (Children) (Northern Ireland) Order 1998 (S.I. 1998/1504 (N.I. 9)) (punishment of grave crimes: indeterminate sentences), a period equal to the period specified in the sentence under Article 45(2) of that Order less any relevant discount;
- (b) where an order under Article 5(1) of the Life Sentences (Northern Ireland) Order 2001 (S.I. 2001/2564 (N.I. 2)) (determination of tariffs) is made in relation to the custodial sentence, a period equal to the part of the sentence specified in that order less any relevant discount;
- (c) where Article 8(1) of the Criminal Justice (Northern Ireland) Order 2008 (S.I. 2008/1216 (N.I. 1)) (sentence for a determinate term) applies in relation to the custodial sentence, a period equal to the custodial period specified pursuant to Article 8(2) of that Order less any relevant discount;
- (d) where a court imposes a sentence under Article 13(3) of the Criminal Justice (Northern Ireland) Order 2008 (indeterminate custodial sentences for serious offences), a period equal to the period specified pursuant to Article 13(3)(b) of that Order less any relevant discount;
- (e) where Article 14(3) of the Criminal Justice (Northern Ireland) Order 2008 (extended custodial sentences for certain offences where the offender is aged over 21) applies in relation to the custodial sentence, a period equal to half of the term imposed pursuant to Article 14(3)(a) of that Order calculated after that term has been reduced by any relevant discount;
- (f) where Article 14(5) of the Criminal Justice (Northern Ireland) Order 2008 (extended custodial sentences for certain offences where the offender is aged under 21) applies in relation to the custodial sentence, a period equal to half of the term imposed pursuant to

Article 14(5)(a) of that Order calculated after that term has been reduced by any relevant discount;

(g) 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 paragraph (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 number of days by which the custodial sentence is treated as reduced by virtue of section 26(2) of the Treatment of Offenders Act (Northern Ireland) 1968 (c. 29) (periods in custody before sentence passed etc).

(7) This Article does not apply where—

(a) the custodial sentence was a suspended sentence, or

(b) the court has made an order under Article 5(3) of the Life Sentences (Northern Ireland) Order 2001 (life sentence: no early release) in relation to the custodial sentence.

(8) Paragraph (9) applies where an amending order provides that the proportion of a prisoner's sentence referred to in Article 18(2)(b) of the Criminal Justice (Northern Ireland) Order 2008 (duty to release prisoners serving extended custodial sentences) is to be read as a reference to another proportion (“the new proportion”).

(9) The Secretary of State may by order provide that the proportion specified in paragraph (4) (e) and (f) of this Article 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 paragraph (9) is subject to annulment by a resolution of either House of Parliament in like manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946 (instruments subject to annulment by resolution of either House of Parliament) applies accordingly.

(11) In this Article—

“amending order” means an order under Article 18(9) of the Criminal Justice (Northern Ireland) Order 2008 (alteration by order of relevant part of sentence);

“custodial sentence” has the meaning given by Article 4 of the Criminal Justice (Northern Ireland) Order 2008;

“suspended sentence” means a suspended sentence or order for detention under section 18 of the Treatment of Offenders Act (Northern Ireland) 1968.

**F10** Arts. 40A-40B inserted (prosp.) by Coroners and Justice Act 2009 (c. 25), ss. 137, 182(5), Sch. 16 para. 4 (with transitional, transitory and savings in s. 180, Sch. 22 para. 29)

PROSPECTIVE

#### Effect of custodial sentence in other cases **N.I.**

**40B.**—(1) This Article applies where a person is convicted of an offence for which a court proposes to order the person to be disqualified under Article 35 or 40 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.

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(2) In determining the period for which the person is to be disqualified under Article 35 or 40, the court must have regard to the consideration in paragraph (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 Article 35 or 40 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 paragraph (2).

(5) In this Article “custodial sentence” and “suspended sentence” have the same meaning as in Article 40A.]

**F10** Arts. 40A-40B inserted (prosp.) by Coroners and Justice Act 2009 (c. 25), ss. 137, 182(5), Sch. 16 para. 4 (with transitional, transitory and savings in s. 180, Sch. 22 para. 29)

### Disqualification until test is passed **N.I.**

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

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

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

(3) Paragraph (1) also applies—

- (a) to a person who is disqualified under Article 35 or 40 [<sup>F11</sup>for such period, in such circumstances or for such period and in such circumstances] as the Department may by order prescribe, or
- (b) to such other persons convicted of such offences involving obligatory endorsement as may be so prescribed.

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

(5) In this Article—

[<sup>F12</sup>“appropriate driving test” means—

- (a) in such circumstances as the Department may by order prescribe, an extended driving test, and
- (b) otherwise, a test of competence to drive which is not an extended driving test,]

“extended driving test” means a test of competence to drive prescribed by the Department by order for the purposes of this Article, and

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

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

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

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

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(8) Subject to paragraph (9), a disqualification by virtue of an order under this Article shall be deemed to have expired on production to the Department of evidence, in such form as may be prescribed by regulations [<sup>F13</sup>made by the Department], 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 [<sup>F14</sup>made by the Department].

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

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

- (a) under the law of Great Britain, the Isle of Man, any of the Channel Islands, another [<sup>F15</sup>EEA State], Gibraltar or a designated country or territory<sup>F15</sup>. . . , or
- (b) for the purposes of obtaining a British Forces licence (as defined by Article 4(10) of [<sup>F15</sup>the Order of 1981]),

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

[<sup>F16</sup>(11A) For the purposes of paragraph (11), “designated country or territory” means a country or territory designated by order under Article 19D(2) of the Order of 1981 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 Article 19D(1) of that Order.]

(12) This Article is subject to Article 53.

(13) An order under paragraph (3) or an order under paragraph (5) prescribing an offence for the purposes of paragraph (a)(i) of the definition of “appropriate driving test” shall be subject to affirmative resolution [<sup>F17</sup>and all other regulations under this Article shall be subject to negative resolution].

(14) <sup>F18</sup> .....

<p><b>F11</b> Words in art. 41(3)(a) substituted (15.11.2007) by Road Traffic (Northern Ireland) Order 2007 (S.I. 2007/916 (N.I. 10)), arts. 1(3), 27(2); S.R. 2007/454, art. 2, Sch.</p> <p><b>F12</b> Art. 41(5): definition of "appropriate driving test" substituted (15.11.2007) by Road Traffic (Northern Ireland) Order 2007 (S.I. 2007/916 (N.I. 10)), arts. 1(3), 27(3); S.R. 2007/454, art. 2, Sch.</p> <p><b>F13</b> Words in art. 41(8) substituted (15.11.2007) by Road Traffic (Northern Ireland) Order 2007 (S.I. 2007/916 (N.I. 10)), arts. 1(3), 27(4); S.R. 2007/454, art. 2, Sch.</p> <p><b>F14</b> Words in art. 41(9) substituted (15.11.2007) by Road Traffic (Northern Ireland) Order 2007 (S.I. 2007/916 (N.I. 10)), arts. 1(3), 27(5); S.R. 2007/454, art. 2, Sch.</p> <p><b>F15</b> SR 1997/241</p> <p><b>F16</b> Art. 41(11A) substituted (15.11.2007) by Road Traffic (Northern Ireland) Order 2007 (S.I. 2007/916 (N.I. 10)), arts. 1(3), 86(2), Sch. 7 para. 19; S.R. 2007/454, art. 2, Sch.</p> <p><b>F17</b> Words in art. 41(13) inserted (15.11.2007) by Road Traffic (Northern Ireland) Order 2007 (S.I. 2007/916 (N.I. 10)), arts. 1(3), 27(6); S.R. 2007/454, art. 2, Sch.</p> <p><b>F18</b> Art. 41(14) repealed (15.11.2007) by Road Traffic (Northern Ireland) Order 2007 (S.I. 2007/916 (N.I. 10)), arts. 1(3), 27(7), 86(2), Sch. 8 Pt. I; S.R. 2007/454, art. 2, Sch.</p>
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### **Effect of order of disqualification** **N.I.**

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

(2) Where—

(a) the disqualification is for a fixed period shorter than 56 days in respect of an offence involving obligatory endorsement, or

(b) the order is made under Article 28,

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

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

(4) Notwithstanding anything in Part II of the Order of 1981, a person disqualified by an order of a court under Article 41 is (unless he is also disqualified otherwise than by virtue of such an order) [<sup>F19</sup>entitled to apply for, 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.

**F19** Words in art. 42(4) substituted (15.11.2007) by Road Traffic (Northern Ireland) Order 2007 (S.I. 2007/916 (N.I. 10)), arts. 1(3), 86(1), Sch. 7 para. 20; S.R. 2007/454, art. 2, Sch.

### **Appeal against disqualification** **N.I.**

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

### **Suspension of disqualification pending appeal** **N.I.**

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

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

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

### **Power of appellate courts to suspend disqualification** **N.I.**

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

(a) any reference to a person ordered to be disqualified is to be construed as a reference to a person so convicted and so ordered to be disqualified, and

(b) any reference to his sentence includes a reference to the order of disqualification and to any other order made on his conviction and, accordingly, any reference to an appeal against his sentence includes a reference to an appeal against any order forming part of his sentence.

(2) Where a person ordered to be disqualified—

(a) appeals to the county court, or

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

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

(3) Where a person ordered to be disqualified has appealed or applied for leave to appeal to the<sup>F20</sup> House of Lords under section 41 of the Judicature (Northern Ireland) Act 1978 from any decision of the High Court or the Court of Appeal which is material to his conviction or sentence, the High Court or, as the case may require, the Court of Appeal may, if it thinks fit, suspend the disqualification.

(4) Where a person ordered to be disqualified makes an application in respect of the decision of the court in question under Article 146 of the Magistrates' Courts (Northern Ireland) Order 1981 (statement of case by magistrates' court) or under Article 61 of the County Courts (Northern Ireland) Order 1980 (statement of case by county court) the Court of Appeal may, if it thinks fit, suspend the disqualification.

(5) Where a person ordered to be disqualified—

(a) applies to the High Court for an order of certiorari to remove into the High Court any proceedings of a county court or a court of summary jurisdiction, being proceedings in or in consequence of which he was convicted or his sentence was passed, or

(b) applies to the High Court for leave to make such an application,

the High Court may, if it thinks fit, suspend the disqualification.

(6) Any power of a court under the preceding provisions of this Article to suspend the disqualification of any person is a power to do so on such terms as the court thinks fit.

(7) Where, by virtue of this Article, a court suspends the disqualification of any person, it must send notice of the suspension to the Department.

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

**F20** prosp. subst. by 2005 c. 4

### **Suspension of disqualification pending determination of applications under Article 37** **N.I.**

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

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

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

PROSPECTIVE

### **[<sup>F21</sup>Suspension of certificate pending determination of applications under Article 38B** **N.I.**

**46A.**—(1) Where a person in respect of whom a certificate is given under paragraph (1) of Article 38B makes an application to a court under paragraph (5) of that Article, the court may suspend the effect of the certificate pending the determination of the application.

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

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

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**F21** Art. 46A inserted (prosp.) by Criminal Justice (Northern Ireland) Order 2008 (S.I. 2008/1216 (N.I. 1)), arts. 1(4), **60(2)**

### Removal of disqualification **N.I.**

**47.**—(1) Subject to the provisions of this Article, a person who by an order of a court is disqualified may apply to the court by which the order was made to remove the disqualification.

(2) On any such application the court may, as it thinks proper having regard to—

- (a) the character of the person disqualified and his conduct subsequent to the order,
- (b) the nature of the offence, and
- (c) any other circumstances of the case,

either by order remove the disqualification as from such date as may be specified in the order or refuse the application.

(3) No application shall be made under paragraph (1) for the removal of a disqualification before the expiration of whichever is relevant of the following periods from the date of the order by which the disqualification was imposed, that is—

- (a) 2 years, if the disqualification is for less than 4 years,
- (b) one half of the period of disqualification, if it is for less than 10 years but not less than 4 years,
- (c) 5 years in any other case;

and in determining the expiration of the period after which under this paragraph a person may apply for the removal of a disqualification, any time after the conviction during which the disqualification was suspended or he was not disqualified shall be disregarded.

(4) Where an application under paragraph (1) is refused, a further application under that paragraph shall not be entertained if made within 3 months after the date of the refusal.

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

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

- (a) must cause particulars of the order to be endorsed on the counterpart of the licence, if any, previously held by the applicant, and
- (b) may in any case order the applicant to pay the whole or any part of the costs of the application.

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

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

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

### Modifications etc. (not altering text)

**C4** Art. 47(6) applied (with modifications) (16.7.2008) by Criminal Justice (Northern Ireland) Order 2008 (S.I. 2008/1216 (N.I. 1)), arts. 1(4), **91(5)**; S.R. 2008/293, art. 2, Sch.

## Rule for determining end of period of disqualification **N.I.**

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

### *Endorsement*

## Endorsement of licences **N.I.**

49.—(1) Where a person is convicted of an offence involving obligatory endorsement, the court must order there to be endorsed on the counterpart of any licence held by him particulars of the conviction and also—

- (a) if the court orders him to be disqualified, particulars of the disqualification, or
- (b) if the court does not order him to be disqualified—
  - (i) particulars of the offence, including the date when it was committed, and
  - (ii) the penalty points to be attributed to the offence.

(2) Where the court does not order the person convicted to be disqualified, it need not make an order under paragraph (1) if for special reasons it thinks fit not to do so.

(3) This Article is subject to Article 53.

VALID FROM 14/12/2010

## [<sup>F22</sup>Endorsement of driving record in accordance with order **N.I.**

49A.—(1) Where the court orders the endorsement of a person's driving record with any particulars or penalty points it must send notice of the order to the Department.

(2) On receiving the notice, the Department must endorse those particulars or penalty points on the person's driving record.

(3) A notice sent by the court to the Department in pursuance of this Article must be sent in such manner and to such address and contain such particulars as the Department may require.]

**F22** Art. 49A inserted (14.12.2010) by Road Traffic (Northern Ireland) Order 2007 (S.I. 2007/916 (N.I. 10)), arts. 1(3), 39(3); S.R. 2010/370, art. 2(2), Sch. Pt. II

## Effect of endorsement **N.I.**

50.—(1) An order that any particulars or penalty points are to be endorsed on the counterpart of any licence held by the person convicted shall, whether he is at the time the holder of a licence or not, operate as an order that the counterpart of any licence he may then hold or may subsequently obtain is to be so endorsed until he becomes entitled under paragraph (3) to have a licence issued to him with its counterpart free from the particulars or penalty points.

(2) On the issue of a new licence to a person, any particulars or penalty points ordered to be endorsed on the counterpart of any licence held by him shall be entered on the counterpart of the licence unless he has become entitled under paragraph (3) to have a licence issued to him with its counterpart free from those particulars or penalty points.

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(3) A person the counterpart of whose licence has been ordered to be endorsed is entitled to have issued to him with effect from the end of the period for which the endorsement remains effective a new licence with a counterpart free from the endorsement if he applies for a new licence in pursuance of Article 13(1) of the Order of 1981, surrenders any subsisting licence and its counterpart, pays the fee prescribed by regulations under Part II of that Order and satisfies the other requirements of Article 13(1) of that Order.

(4) An endorsement ordered on a person's conviction of an offence remains effective (subject to paragraphs (5) and (6))—

- (a) if an order is made for the disqualification of the offender, until 4 years have elapsed since the conviction, and
- (b) if no such order is made, until either—
  - (i) 4 years have elapsed since the commission of the offence, or
  - (ii) an order is made for the disqualification of the offender under Article 40.

(5) Where the offence was one under Article 9 or 10 of the Order of 1995 (causing death, or grievous bodily injury, by dangerous driving and dangerous driving), the endorsement remains in any case effective until 4 years have elapsed since the conviction.

(6) Where the offence was one—

- (a) under Article 14, 15(1) or 16(1)(a) of that Order (driving offences connected with drink or drugs), <sup>F23</sup> . . .
- (b) under Article 18(7) of that Order (failing to provide specimen) involving obligatory disqualification, [<sup>F24</sup>or
- (c) under Article 18A(6) of that Order (failing to allow a specimen to be subjected to laboratory test),]

the endorsement remains effective until 11 years have elapsed since the conviction.

**F23** Words in art. 50(6)(a) repealed (15.11.2007) by Road Traffic (Northern Ireland) Order 2007 (S.I. 2007/916 (N.I. 10)), arts. 1(3), 86(2), Sch. 8 Pt. I; S.R. 2007/454, art. 2, Sch.

**F24** Art. 50(6)(c) and preceding word inserted (15.11.2007) by Road Traffic (Northern Ireland) Order 2007 (S.I. 2007/916 (N.I. 10)), arts. 1(3), 15; S.R. 2007/454, art. 2, Sch.

VALID FROM 14/12/2010

**[<sup>F25</sup>Effect of endorsement of driving records N.I.]**

**50A.—(1)** An order that any particulars or penalty points are to be endorsed on a person's driving record shall operate as an order that his driving record is to be so endorsed until the end of the period for which the endorsement remains effective.

(2) At the end of the period for which the endorsement remains effective the Department must remove the endorsement from the person's driving record.

(3) On the issue of a new licence to a person, any particulars ordered to be endorsed on his driving record shall be entered on the counterpart of the licence unless he has become entitled under paragraph (4) to have a licence issued to him with its counterpart free from those particulars or penalty points.

(4) A person the counterpart of whose licence has been endorsed under paragraph (3) is entitled to have issued to him with effect from the end of the period for which the endorsement remains effective a new licence with a counterpart free from the endorsement if he applies for a new

licence in pursuance of Article 13(1) of the Order of 1981, surrenders any subsisting licence and its counterpart, pays the fee prescribed by regulations under Part II of that Order and satisfies the other requirements of Article 13(1) of that Order.

(5) The period for which an endorsement remains effective is determined in accordance with Article 50(4) to (6).]

**F25** Art. 50A inserted (14.12.2010) by Road Traffic (Northern Ireland) Order 2007 (S.I. 2007/916 (N.I. 10)), arts. 1(3), 39(6), **Sch. 4 para. 9**; S.R. 2010/370, **art. 2(2)**, Sch. Pt. II

### General

#### Combination of disqualification and endorsement with probation orders and orders for discharge **N.I.**

**51.**—(1) Notwithstanding anything in section 8(2) of the Probation Act (Northern Ireland) 1950 (conviction of offender placed on probation or discharged to be disregarded for the purposes of enactments relating to disqualification), a court which on convicting a person of an offence involving obligatory or discretionary disqualification makes—

- (a) a probation order, or
- (b) an order discharging him absolutely or conditionally,

may on that occasion also exercise any power conferred, and must also discharge any duty imposed, on the court by Articles 35, 40, 41 or 49.

(2) A conviction—

- (a) in respect of which a court has ordered a person to be disqualified, or
- (b) of which particulars have been endorsed on the counterpart of any licence held by him,

is to be taken into account, notwithstanding anything in section 8(1) of the Probation Act (Northern Ireland) 1950 (conviction of offender placed on probation or discharged to be disregarded for the purpose of subsequent proceedings), in determining his liability to punishment or disqualification for any offence involving obligatory or discretionary disqualification committed subsequently.

#### Supplementary provisions as to disqualifications and endorsements **N.I.**

**52.**—(1) In any case where a court exercises its power under Article 35, 40 or 49 not to order any disqualification or endorsement or to order disqualification for a shorter period than would otherwise be required, it must state the grounds for doing so in the order of the court.

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

[<sup>F26</sup>(2A) Paragraph (2) is subject to Article 4(2) of, and paragraph 7(2) of Schedule 1 to, the Road Traffic (New Drivers)(Northern Ireland) Order 1998 (obligation of court to send licence and its counterpart to the Department).]

(3) Where on an appeal against an order for the endorsement of a licence or the disqualification of a person the appeal is allowed, the court by which the appeal is allowed must send notice of that fact to the Department.

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(4) A notice sent by a court to the Department in pursuance of this Article must be sent in such manner and to such address and contain such particulars as the Department may determine, and a licence and the counterpart of a licence so sent in pursuance of this Article must be sent to such address as the Department may determine.

F26 1998 NI 7

### **Exemption from disqualification and endorsement for certain construction and use offences** **N.I.**

**53.**—(1) Where a person is convicted of an offence under Article 54 of the Order of 1995 (using vehicle in dangerous condition etc.) the court must not—

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

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

(2) Where a person is convicted of an offence under Article 56 of the Order of 1995 (breach of requirement as to brakes, steering-gear or tyres) the court must not—

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

if he proves that he did not know, and had no reasonable cause to suspect, that the facts of the case were such that the offence would be committed.

### **Offender escaping consequences of endorsable offence by deception** **N.I.**

**54.**—(1) This Article applies where in dealing with a person convicted of an offence involving obligatory endorsement a court was deceived regarding any circumstances that were or might have been taken into account in deciding whether or for how long to disqualify him.

(2) If—

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

the court by or before which he is convicted shall have the same powers and duties regarding an order for disqualification as had the court which dealt with him for the offence involving obligatory endorsement but must, in dealing with him, take into account any order made on his conviction of the offence involving obligatory endorsement.

**Status:**

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