



# Road Traffic Offenders Act 1988

## 1988 CHAPTER 53

### PART I **U.K.**

#### TRIAL

##### *Introductory*

### 1 Requirement of warning etc. of prosecutions for certain offences. **E+W+S**

- (1) Subject to section 2 of this Act, [<sup>F1</sup>a person shall not be convicted of an offence to which this section applies unless]—
- (a) he was warned at the time the offence was committed that the question of prosecuting him for some one or other of the offences to which this section applies would be taken into consideration, or
  - (b) within fourteen days of the commission of the offence a summons (or, in Scotland, a complaint) for the offence was served on him, or
  - (c) within fourteen days of the commission of the offence a notice of the intended prosecution specifying the nature of the alleged offence and the time and place where it is alleged to have been committed, was—
    - (i) in the case of an offence under section 28 or 29 of the <sup>M1</sup>Road Traffic Act 1988 (cycling offences), served on him,
    - (ii) in the case of any other offence, served on him or on the person, if any, registered as the keeper of the vehicle at the time of the commission of the offence.

[<sup>F2</sup>(1A) A notice required by this section to be served on any person may be served on that person—

- (a) by delivering it to him;
- (b) by addressing it to him and leaving it at his last known address; or
- (c) by sending it by registered post, recorded delivery service or first class post addressed to him at his last known address.]

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- (2) A notice shall be deemed for the purposes of subsection (1)(c) above to have been served on a person if it was sent by registered post or recorded delivery service addressed to him at his last known address, notwithstanding that the notice was returned as undelivered or was for any other reason not received by him.
- (3) The requirement of subsection (1) above shall in every case be deemed to have been complied with unless and until the contrary is proved.
- (4) Schedule 1 to this Act shows the offences to which this section applies.

#### Textual Amendments

- F1** Words in s. 1(1) substituted (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), s. 48, **Sch. 4 para. 80**; S.I. 1992/1286, art. 2, **Sch.**
- F2** S. 1(1A) inserted (3.2.1995) by 1994 c. 33, s. 168(1), **Sch. 9 para. 6(3)**; S.I. 1995/127, art. 2(1), **Sch. 1** Appendix A

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

- C1** Ss. 1, 2 excluded by Road Traffic Act 1988 (c. 52, SIF 107:1), s. 193, Sch. 4 paras. 8, **11**
- C2** S. 1: power to exclude or modify conferred (1.7.1992) by Road Traffic Act 1988 (c. 52, SIF 107:1), s. **193A(2)(b)** (inserted (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), s. **46(2)**; S.I. 1992/1286, art. 2, **Sch.**).

#### Marginal Citations

- M1** 1988 c. 52.

## 2 Requirement of warning etc: supplementary. **E+W+S**

- (1) The requirement of section 1(1) of this Act does not apply in relation to an offence if, at the time of the offence or immediately after it, an accident occurs owing to the presence on a road of the vehicle in respect of which the offence was committed.
- (2) The requirement of section 1(1) of this Act does not apply in relation to an offence in respect of which—
  - (a) a fixed penalty notice (within the meaning of Part III of this Act) has been given or fixed under any provision of that Part, or
  - (b) a notice has been given under section 54(4) of this Act.
- (3) Failure to comply with the requirement of section 1(1) of this Act is not a bar to the conviction of the accused in a case where the court is satisfied—
  - (a) that neither the name and address of the accused nor the name and address of the registered keeper, if any, could with reasonable diligence have been ascertained in time for a summons or, as the case may be, a complaint to be served or for a notice to be served or sent in compliance with the requirement, or
  - (b) that the accused by his own conduct contributed to the failure.
- <sup>F3</sup>(4) Failure to comply with the requirement of section 1(1) of this Act in relation to an offence is not a bar to the conviction of a person of that offence by virtue of the provisions of—
  - (a) section 24 of this Act, or
  - (b) any of the enactments mentioned in section 24(6);

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but a person is not to be convicted of an offence by virtue of any of those provisions if section 1 applies to the offence with which he was charged and the requirement of section 1(1) was not satisfied in relation to the offence charged.]

#### Textual Amendments

**F3** S. 2(4) substituted (1.7.1992) for s. 2(4)-(6) by Road Traffic Act 1991 (c. 40, SIF 107:1), s. 48, Sch. 4 para. 81; S.I. 1992/1286, art. 2, Sch.

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

**C3** Ss. 1, 2 excluded by Road Traffic Act 1988 (c. 52, SIF 107:1), s. 193, Sch. 4 paras. 8, 11

**C4** S. 2: power to exclude or modify conferred (1.7.1992) by Road Traffic Act 1988 (c. 52, SIF 107:1), s. 193A(2)(b) (inserted (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), s. 46(2); S.I. 1992/1286, art. 2, Sch.).

### 3 Restriction on institution of proceedings for certain offences. **E+W+S**

[<sup>F4</sup>(1) . . .

.]

(2) In England and Wales, proceedings for an offence under section 94(3) of the Road Traffic Act 1988 (notice about relevant or prospective disability) shall not be instituted except by the Secretary of State or by a constable acting with the approval of the Secretary of State.

[<sup>F5</sup>(2A) In subsection (2) above the reference to section 94(3) of the Road Traffic Act 1988 includes a reference to that section as applied by section 99D of that Act.]

#### Textual Amendments

**F4** S. 3(1) repealed (1.4.1991) by Road Traffic (Driver Licensing and Information Systems) Act 1989 (c. 22, SIF 107:1), s. 16, Sch. 6

**F5** S. 3(2A) inserted (1.1.1997) by S.I. 1996//1974, reg. 3, Sch. 2 para. 1

### 4 Offences for which local authorities in England and Wales may institute proceedings. **E+W**

(1) The council of a county, metropolitan district or London Borough or the Common Council of the City of London may institute proceedings for an offence under section [<sup>F6</sup>15A of the Road Traffic Act 1988 (safety equipment for children in motor vehicles) or under section 17 or 18 of that Act] (helmets and other head-worn appliances for motor cyclists).

(2) The council of a county, metropolitan district or London Borough or the Common Council of the City of London may institute proceedings for an offence under section 27 of that Act (dogs on roads) relating to a road in their area.

(3) The council of a county, district or London borough or the Common Council of the City of London may institute proceedings for offences under section [<sup>F7</sup>35A(1), (2) or (5)] of the <sup>M2</sup>Road Traffic Regulation Act 1984 which are committed in connection with

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parking places provided by the council, or provided under any letting arrangements made by the council under section 33(4) of that Act.

- (4) The council of a county, metropolitan district or London borough or the Common Council of the City of London may institute proceedings for an offence under section 47 or 52 of the Road Traffic Regulation Act 1984 in connection with a designated parking place controlled by the council.
- (5) In England, the council of a county or metropolitan district and, in Wales, the council of a county [<sup>F8</sup>or county borough] may institute proceedings for an offence under section 53 of the Road Traffic Regulation Act 1984 in connection with a designated parking place in the council's area <sup>F9</sup>. . .
- (6) In this section “parking place” means a place where vehicles, or vehicles of any class, may wait and “designated parking place” has the same meaning as in the <sup>M3</sup>Road Traffic Regulation Act 1984.
- (7) This section extends to England and Wales only.
- [<sup>F10</sup>(8) In relation to Wales, any reference in subsections (1) to (4) above to a county shall be read as including a reference to a county borough.]

#### Textual Amendments

- F6** Words in s. 4(1) substituted by [Motor Vehicles \(Safety Equipment for Children\) Act 1991 \(c. 14, SIF 107:1\)](#), s. 3(1).
- F7** Words substituted by [Parking Act 1989 \(c. 16, SIF 107:1\)](#), s. 4, [Sch. para. 10](#)
- F8** Words in s. 4(5) substituted (1.4.1996) by 1994 c. 19, s. 22(1), [Sch. 7 Pt. II](#), para. 41(2)(a); S.I. 1996/396, art. 3, [Sch. 1](#)
- F9** Words in s. 4(5) repealed (1.4.1996) by 1994 c. 19, ss. 22(1), 66(8), [Sch. 7 Pt. II](#), para. 41(2)(b), [Sch. 18](#); S.I. 1996/396, arts. 3, 4, [Sch. 1](#), [Sch. 2](#)
- F10** S. 4(8) inserted (1.4.1996) by 1994 c. 19, s. 22(1), [Sch. 7 Pt. II](#), para. 41(3); S.I. 1996/396, art. 3, [Sch. 1](#)

#### Marginal Citations

- M2** 1984 c. 27.
- M3** 1984 c. 27.

## 5 Exemption from Licensing Act offence. **E+W+S**

A person liable to be charged with an offence under [<sup>F11</sup>section 3A, 4], 5, 7 or 30 of the <sup>M4</sup>Road Traffic Act 1988 (drink and drugs) is not liable to be charged under section 12 of the <sup>M5</sup>Licensing Act 1872 with the offence of being drunk while in charge, on a highway or other public place, of a carriage.

#### Textual Amendments

- F11** Words in s. 5 substituted (1.7.1992) by [Road Traffic Act 1991 \(c. 40, SIF 107:1\)](#), s. 48, [Sch. 4 para. 82](#); S.I. 1992/1286, [art. 2](#), Sch.

#### Marginal Citations

- M4** 1988 c. 52.

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M5 1872 c. 94.

## 6 Time within which summary proceedings for certain offences must be commenced. **E+W+S**

- (1) Subject to subsection (2) below, summary proceedings for an offence to which this section applies may be brought within a period of six months from the date on which evidence sufficient in the opinion of the prosecutor to warrant the proceedings came to his knowledge.
- (2) No such proceedings shall be brought by virtue of this section more than three years after the commission of the offence.
- (3) For the purposes of this section, a certificate signed by or on behalf of the prosecutor and stating the date on which evidence sufficient in his opinion to warrant the proceedings came to his knowledge shall be conclusive evidence of that fact.
- (4) A certificate stating that matter and purporting to be so signed shall be deemed to be so signed unless the contrary is proved.
- (5) In relation to proceedings in Scotland, subsection (3) of [<sup>F12</sup>section 136 of the Criminal Procedure (Scotland) Act 1995] (date of commencement of proceedings) shall apply for the purposes of this section as it applies for the purposes of that.
- (6) Schedule 1 to this Act shows the offences to which this section applies.

### Textual Amendments

F12 Words in s. 6(5) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), Sch. 4 para. 71(2)

### Modifications etc. (not altering text)

C5 S. 6 applied (1.1.1996) by 1995 c. 23, s. 51

## 7 Duty of accused to provide licence. **E+W+S**

A person who is prosecuted for an offence involving [<sup>F13</sup>obligatory or discretionary disqualification] and who is the holder of a licence must—

- (a) cause it to be delivered to the clerk of the court not later than the day before the date appointed for the hearing, or
- (b) post it, at such a 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) have it with him at the hearing

[<sup>F14</sup>and the foregoing obligations imposed on him as respects the licence also apply as respects the counterpart to the licence.]

### Textual Amendments

F13 Words in s. 7 substituted (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), s. 48, Sch. 4 para.83; S.I. 1992/1286, art. 2, Sch.

F14 Words inserted by S.I. 1990/144, regs. 2(2), 3, Sch. 2 para. 1

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

- C6 S. 7 applied with modifications by S.I. 1987/1378, **reg. 25(3)** (as amended by S.I. 1990/842, **reg. 9**)
- C7 S. 7: power to exclude or modify conferred (1.7.1992) by Road Traffic Act 1988 (c. 52, SIF 107:1), **s. 193A(2)(b)** (inserted (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), **s. 46(2)**; S.I. 1992/1286, **art. 2, Sch.**).
- C8 S. 7 extended (1.6.1997) by 1995 c. 13, s. 6, **Sch. 1 Pt. II**, para. 3(2); S.I. 1997/267, **art. 2(2)**
- C9 S. 7 applied (with modifications) (12.11.1999) by S.I. 1999/2864, **reg. 80(5)(a)**

### 8 Duty to include date of birth and sex in written plea of guilty. **E+W+S**

A person who—

- (a) gives a notification to the clerk of a court in pursuance of section 12(2) of the <sup>M6</sup>Magistrates' Courts Act 1980 (written pleas of guilty), or
- (b) gives a written intimation of a plea of guilty in pursuance of section 334(3) of the <sup>M7</sup>Criminal Procedure (Scotland) Act 1975,

in respect of an offence involving obligatory or discretionary disqualification or of such other offence as may be prescribed by regulations under section 105 of the <sup>M8</sup>Road Traffic Act 1988, must include in the notification or intimation a statement of the date of birth and sex of the accused.

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

- C10 S. 8: power to exclude or modify conferred (1.7.1992) by Road Traffic Act 1988 (c. 52, SIF 107:1), **s. 193A(2)(b)** (inserted (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), **s. 46(2)**; S.I. 1992/1286, **art. 2, Sch.**).

#### Marginal Citations

- M6** 1980 c. 43.
- M7** 1975 c. 21.
- M8** 1988 c. 52.

*Trial*

### 9 Mode of trial. **E+W+S**

An offence against a provision of the Traffic Acts specified in column 1 of Part I of Schedule 2 to this Act or regulations made under such a provision (the general nature of which offence is indicated in column 2) shall be punishable as shown against the offence in column 3 (that is, on summary conviction or on indictment or in either one way or the other).

### 10 Jurisdiction of district court in Scotland. **E+W+S**

- (1) Notwithstanding anything in any enactment or rule of law to the contrary, a district court in Scotland may try—
  - (a) any fixed penalty offence (within the meaning of Part III of this Act), and
  - (b) any other offence in respect of which a conditional offer (within the meaning of sections 75 to 77 of this Act) may be sent.

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- (2) Subject to subsection (1) above, the district court may not try any offence involving obligatory endorsement.

## 11 Evidence by certificate as to driver, user or owner. E+W+S

- (1) In any proceedings in England and Wales for an offence to which this section applies, a certificate in the prescribed form, purporting to be signed by a constable and certifying that a person specified in the certificate stated to the constable—

- (a) that a particular [<sup>F15</sup>mechanically propelled vehicle] was being driven or used by, or belonged to, that person on a particular occasion, or
- (b) that a particular [<sup>F15</sup>mechanically propelled vehicle] on a particular occasion was used by, or belonged to, a firm and that he was, at the time of the statement, a partner in that firm, or
- (c) that a particular [<sup>F15</sup>mechanically propelled vehicle] on a particular occasion was used by, or belonged to, a corporation and that he was, at the time of the statement, a director, officer or employee of that corporation,

shall be admissible as evidence for the purpose of determining by whom the vehicle was being driven or used, or to whom it belonged, as the case may be, on that occasion.

- (2) Nothing in subsection (1) above makes a certificate admissible as evidence in proceedings for an offence except in a case where and to the like extent to which oral evidence to the like effect would have been admissible in those proceedings.

- (3) Nothing in subsection (1) above makes a certificate admissible as evidence in proceedings for an offence—

- (a) unless a copy of it has, not less than seven days before the hearing or trial, been served in the prescribed manner on the person charged with the offence, or
- (b) if that person, not later than three days before the hearing or trial or within such further time as the court may in special circumstances allow, serves a notice in the prescribed form and manner on the prosecutor requiring attendance at the trial of the person who signed the certificate.

- [<sup>F16</sup>(3A) Where the proceedings mentioned in subsection (1) above are proceedings before a magistrates' court inquiring into an offence as examining justices this section shall have effect with the omission of—

- (a) subsection (2), and
- (b) in subsection (3), paragraph (b) and the word “or” immediately preceding it.]

- (4) In this section “prescribed” means prescribed by rules made by the Secretary of State by statutory instrument.

- (5) Schedule 1 to this Act shows the offences to which this section applies.

### Textual Amendments

**F15** Words in s. 11(1) substituted (1.7.1992) by [Road Traffic Act 1991 \(c. 40, SIF 107:1\)](#), s. 48, [Sch. 4 para. 84](#); [S.I. 1992/1286](#), art. 2, [Sch.](#)

**F16** S. 11(3A) inserted (8.3.1997) (EW) by [1996 c. 25, s. 47, Sch. 1 Pt. II, para. 35](#) (with s. 78(1)); [S.I. 1997/683](#), art. 1(2)

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

- C11** S. 11 extended by Greater London Council (General Powers) Act 1974 (c. xxxiv, SIF 107:1), s. 15(2) (b) (as amended by [Road Traffic \(Consequential Provisions\) Act 1988 \(c. 54, SIF 107:1\)](#), s. 4, [Sch. 3 para. 12\(a\)](#))
- C12** S. 11: power to extend conferred by [Road Traffic Regulation Act 1984 \(c. 27, SIF 107:1\)](#), [s. 96\(2\)\(d\)](#) (as substituted by [Road Traffic \(Consequential Provisions\) Act 1988 \(c. 54, SIF 107:1\)](#), s. 4, [Sch. 3 para. 25\(e\)](#))

## 12 Proof, in summary proceedings, of identity of driver of vehicle. **E+W+S**

- (1) Where on the summary trial in England and Wales of an information for an offence to which this subsection applies—
- it is proved to the satisfaction of the court, on oath or in manner prescribed by rules made under section 144 of the <sup>M9</sup>Magistrates' Courts Act 1980, that a requirement under section 172(2) of the <sup>M10</sup>Road Traffic Act 1988 to give information as to the identity of the driver of a particular vehicle on the particular occasion to which the information relates has been served on the accused by post, and
  - a statement in writing is produced to the court purporting to be signed by the accused that the accused was the driver of that vehicle on that occasion,
- the court may accept that statement as evidence that the accused was the driver of that vehicle on that occasion.
- (2) Schedule 1 to this Act shows the offences to which subsection (1) above applies.
- (3) Where on the summary trial in England and Wales of an information for an offence to which section 112 of the <sup>M11</sup>Road Traffic Regulation Act 1984 applies—
- it is proved to the satisfaction of the court, on oath or in manner prescribed by rules made under section 144 of the Magistrates' Courts Act 1980, that a requirement under section 112(2) of the Road Traffic Regulation Act 1984 to give information as to the identity of the driver of a particular vehicle on the particular occasion to which the information relates has been served on the accused by post, and
  - a statement in writing is produced to the court purporting to be signed by the accused that the accused was the driver of that vehicle on that occasion,
- the court may accept that statement as evidence that the accused was the driver of that vehicle on that occasion.
- <sup>F17</sup>(4) In summary proceedings in Scotland for an offence to which section 20(2) of the <sup>F18</sup>this Act] applies, where—
- it is proved to the satisfaction of the court that a requirement under section 172(2) of the Road Traffic Act 1988 to give information as to the identity of a driver on a particular occasion to which the complaint relates has been served on the accused by post, and
  - a statement in writing is produced to the court, purporting to be signed by the accused, that the accused was the driver of that vehicle on that occasion,
- that statement shall be sufficient evidence that the accused was the driver of the vehicle on that occasion.



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### Textual Amendments

- F17** S. 12(4) added (1.4.1993 only for the purposes of summary criminal proceedings in Scotland which are commenced on or after 1.4.1993) by Road Traffic Act 1991 (c. 40, SIF 107:1), s. 48, **Sch. 4 para.85**; S.I. 1993/975, **art. 2 Sch.**
- F18** Words in s. 12(4) (as proposed to be inserted by 1991 c. 40, **Sch. 4 para. 85**) substituted (S.) (29.3.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 5** (with s. 47(2), Sch. 6 paras. 1, 2)

### Modifications etc. (not altering text)

- C13** S. 12 extended by Greater London Council (General Powers) Act 1974 (c. xxiv, SIF 107:1, s. 15(2) (b) (as amended by Road Traffic (Consequential Provisions) Act 1988 (c. 54, SIF 107:1), s. 4, **Sch. 3 para. 12(a)**)

### Marginal Citations

- M9** 1980 c. 43.  
**M10** 1988 c. 52.  
**M11** 1984 c. 27.

## 13 Admissibility of records as evidence. **E+W+S**

- (1) This section applies to a statement contained in a document purporting to be—
- a part of the records maintained by the Secretary of State in connection with any functions exercisable by him by virtue of Part III of the Road Traffic Act 1988 or a part of any other records maintained by the Secretary of State with respect to vehicles [or of any records maintained with respect to vehicles by an approved testing authority in connection with the exercise by that authority of any functions conferred on such authorities, or on that authority as such an authority, by or under any enactment], or
  - a copy of a document forming part of those records, or
  - a note of any information contained in those records,
- and to be authenticated by a person authorised in that behalf by the Secretary of State.
- (2) A statement to which this section applies shall be admissible in any proceedings as evidence (in Scotland, sufficient evidence) of any fact stated in it to the same extent as oral evidence of that fact is admissible in those proceedings.

[<sup>F19</sup>(3) In the preceding subsections, except in Scotland—

“copy”, in relation to a document, means anything onto which information recorded in the document has been copied, by whatever means and whether directly or indirectly;

“document” means anything in which information of any description is recorded; and

“statement” means any representation of fact, however made.

- (3A) In Scotland, in the preceding subsections “document” and “statement” have the same meanings as in section 17(3) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1968, and the reference to a copy of a document shall be construed in accordance with section 17(4) of that Act; but nothing in this subsection shall be construed as limiting to civil proceedings the references to proceedings in subsection (2) above.]

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(4) In any case where—

- (a) a statement to which this section applies is produced to a magistrates' court in any proceedings for an offence involving obligatory or discretionary disqualification,
- (b) the statement specifies an alleged previous conviction of an accused person of any such offence or any order made on the conviction,
- (c) it is proved to the satisfaction of the court, on oath or in such manner as may be prescribed by rules under section 144 of the <sup>M12</sup>Magistrates' Courts Act 1980, that not less than seven days before the statement is so produced a notice was served on the accused, in such form and manner as may be so prescribed, specifying the previous conviction or order and stating that it is proposed to bring it to the notice of the court in the event of or, as the case may be, in view of his conviction, and
- (d) the accused is not present in person before the court when the statement is so produced,

the court may take account of the previous conviction or order as if the accused had appeared and admitted it.

(5) Nothing in the preceding provisions of this section enables evidence to be given in respect of any matter other than a matter of a description prescribed by regulations made by the Secretary of State.

(6) The power to make regulations under this section shall be exercisable by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

[<sup>F20</sup>(7) Where the proceedings mentioned in subsection (2) above are proceedings before a magistrates' court inquiring into an offence as examining justices this section shall have effect as if—

- (a) in subsection (2) the words "to the same extent as oral evidence of that fact is admissible in those proceedings" were omitted;
- (b) in subsection (4) the word "and" were inserted at the end of paragraph (a);
- (c) in subsection (4), paragraphs (c) and (d) and the words "as if the accused had appeared and admitted it" were omitted.]

#### Textual Amendments

**F19** S. 13(3) substituted for s. 13(3)(3A) (31.1.1997) by 1995 c. 38, s. 15(1), **Sch. 1 para. 15**; S.I. 1996/3217, **art. 2**

**F20** S. 13(7) inserted (8.3.1997) (EW) by 1996 c. 25, s. 47, **Sch. 1 Pt. II para. 36**; S.i. 1997/683, art. 1(2)

#### Marginal Citations

**M12** 1980 c. 43.

## 14 Use of records kept by operators of goods vehicles. **E+W+S**

In any proceedings [<sup>F21</sup>for an offence under section 40A of the Road Traffic Act 1988 or] for a contravention of or failure to comply with construction and use requirements (within the meaning of Part II of the <sup>M13</sup>Road Traffic Act 1988) or regulations under section 74 of that Act, any record purporting to be made and authenticated

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in accordance with regulations under that section shall be evidence (and in Scotland sufficient evidence) of the matters stated in the record and of its due authentication.

#### Textual Amendments

**F21** Words in s. 14 inserted (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), s. 48, Sch. 4 para.86; S.I. 1992/1286, art. 2, Sch.

#### Marginal Citations

**M13** 1988 c. 52.

## 15 Use of specimens in proceedings for an offence under section 4 or 5 of the Road Traffic Act. **U.K.**

- (1) This section and section 16 of this Act apply in respect of proceedings for an offence under [<sup>F22</sup>section 3A, 4 or 5 of the Road Traffic Act 1988 (driving offences connected with drink or drugs)]; and expressions used in this section and section 16 of this Act have the same meaning as in [<sup>F23</sup>sections 3A to 10] of that Act.
- (2) Evidence of the proportion of alcohol or any drug in a specimen of breath, blood or urine provided by the accused shall, in all cases [<sup>F24</sup>(including cases where the specimen was not provided in connection with the alleged offence)], be taken into account and, subject to subsection (3) below, it shall be assumed that the proportion of alcohol in the accused's breath, blood or urine at the time of the alleged offence was not less than in the specimen.
- [<sup>F25</sup>(3) That assumption shall not be made if the accused proves—
  - (a) that he consumed alcohol before he provided the specimen and—
    - (i) in relation to an offence under section 3A, after the time of the alleged offence, and
    - (ii) otherwise, after he had ceased to drive, attempt to drive or be in charge of a vehicle on a road or other public place, and
  - (b) that had he not done so the proportion of alcohol in his breath, blood or urine would not have exceeded the prescribed limit and, if it is alleged that he was unfit to drive through drink, would not have been such as to impair his ability to drive properly.]
- (4) A specimen of blood shall be disregarded unless it was taken from the accused with his consent by a medical practitioner.
- (5) Where, at the time a specimen of blood or urine was provided by the accused, he asked to be provided with such a specimen, evidence of the proportion of alcohol or any drug found in the specimen is not admissible on behalf of the prosecution unless—
  - (a) the specimen in which the alcohol or drug was found is one of two parts into which the specimen provided by the accused was divided at the time it was provided, and
  - (b) the other part was supplied to the accused.

#### Textual Amendments

**F22** Words in s. 15(1) substituted (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), s. 48, Sch. 4 para. 87(2); S.I. 1992/1286, art. 2, Sch.

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- F23** Words in s. 15(1) substituted (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), s. 48, **Sch. 4 para. 87(2)**; S.I. 1992/1286, **art. 2**, Sch.
- F24** Words in s. 15(2) inserted (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), s. 48, **Sch. 4 para. 87(3)**; S.I. 1992/1286, **art. 2**, Sch.
- F25** S. 15(3) substituted (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), s. 48, **Sch. 4 para. 87(4)**; S.I. 1992/1286, **art. 2**, Sch.

## 16 Documentary evidence as to specimens in such proceedings. **U.K.**

- (1) Evidence of the proportion of alcohol or a drug in a specimen of breath, blood or urine may, subject to subsections (3) and (4) below and to section 15(5) of this Act, be given by the production of a document or documents purporting to be whichever of the following is appropriate, that is to say—
  - (a) a statement automatically produced by the device by which the proportion of alcohol in a specimen of breath was measured and a certificate signed by a constable (which may but need not be contained in the same document as the statement) that the statement relates to a specimen provided by the accused at the date and time shown in the statement, and
  - (b) a certificate signed by an authorised analyst as to the proportion of alcohol or any drug found in a specimen of blood or urine identified in the certificate.
- (2) Subject to subsections (3) and (4) below, evidence that a specimen of blood was taken from the accused with his consent by a medical practitioner may be given by the production of a document purporting to certify that fact and to be signed by a medical practitioner.
- (3) Subject to subsection (4) below—
  - (a) a document purporting to be such a statement or such a certificate (or both such a statement and such a certificate) as is mentioned in subsection (1)(a) above is admissible in evidence on behalf of the prosecution in pursuance of this section only if a copy of it either has been handed to the accused when the document was produced or has been served on him not later than seven days before the hearing, and
  - (b) any other document is so admissible only if a copy of it has been served on the accused not later than seven days before the hearing.
- (4) A document purporting to be a certificate (or so much of a document as purports to be a certificate) is not so admissible if the accused, not later than three days before the hearing or within such further time as the court may in special circumstances allow, has served notice on the prosecutor requiring the attendance at the hearing of the person by whom the document purports to be signed.
- (5) In Scotland—
  - (a) a document produced in evidence on behalf of the prosecution in pursuance of subsection (1) or (2) above and, where the person by whom the document was signed is called as a witness, the evidence of that person, shall be sufficient evidence of the facts stated in the document, and
  - (b) a written execution purporting to be signed by the person who handed to or served on the accused or the prosecutor a copy of the document or of the notice in terms of subsection (3) or (4) above, together with, where appropriate, a post office receipt for the registered or recorded delivery letter shall be sufficient evidence of the handing or service of such a copy or notice.

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- (6) A copy of a certificate required by this section to be served on the accused or a notice required by this section to be served on the prosecutor may be served personally or sent by registered post or recorded delivery service.
- [<sup>F26</sup>(6A) Where the proceedings mentioned in section 15(1) of this Act are proceedings before a magistrates' court inquiring into an offence as examining justices this section shall have effect with the omission of subsection (4).]
- (7) In this section “authorised analyst” means—
- any person possessing the qualifications prescribed by regulations made under [<sup>F27</sup>section 27 of the Food Safety Act 1990] as qualifying persons for appointment as public analysts under those Acts, and
  - any other person authorised by the Secretary of State to make analyses for the purposes of this section.

#### Textual Amendments

**F26** S. 16(6A) inserted (8.3.1997) (E.W.) by 1996 c. 25, s. 47, **Sch. 1 Pt. II**, para. 37, Pt. III para. 39; S.I. 1997/683, **art. 1(2)**

**F27** Words substituted by Food Safety Act 1990 (c. 16, SIF 53:1, 2), s. 59(1), **Sch. 3 para. 38**

## 17 Provisions as to proceedings for certain offences in connection with the construction and use of vehicles and equipment. **E+W+S**

- (1) If in any proceedings for an offence under [<sup>F28</sup>section 40A, 41A, 41B or 42 of the Road Traffic Act 1988 (using vehicle in dangerous condition or contravention)] of construction and use regulations—
- any question arises as to a weight of any description specified in the plating certificate for a goods vehicle, and
  - a weight of that description is marked on the vehicle,
- it shall be assumed, unless the contrary is proved, that the weight marked on the vehicle is the weight so specified.
- (2) If, in any proceedings for an offence—
- under Part II of the Road Traffic Act 1988, except sections 47 and 75, or
  - under section 174(2) or (5) (false statements and deception) of that Act,
- any question arises as to the date of manufacture of a vehicle, a date purporting to be such a date and marked on the vehicle in pursuance of regulations under that Part of that Act shall be evidence (and in Scotland sufficient evidence) that the vehicle was manufactured on the date so marked.
- (3) If in any proceedings for the offence of driving a <sup>F29</sup>. . . vehicle on a road, or causing or permitting a <sup>F29</sup>. . . vehicle to be so driven, in contravention of a prohibition under section 70(2) of the Road Traffic Act 1988 any question arises whether a weight of any description has been reduced to a limit imposed by construction and use requirements [<sup>F30</sup>, or so that it has ceased to be excessive], the burden of proof shall lie on the accused.
- (4) If in any proceedings in Scotland for an offence under the Traffic Acts any question arises as to a weight of any description in relation to a vehicle—

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- (a) a certificate purporting to be signed by an inspector of weights and measures and certifying the accuracy of a weighbridge or other machine for weighing vehicles shall be sufficient evidence of the facts stated in the certificate, and
- (b) where the inspector is called as a witness his evidence shall be sufficient evidence of those facts.

In this subsection “inspector of weights and measures” has the same meaning as in the <sup>M14</sup>Weights and Measures Act 1985, except that it includes a chief inspector within the meaning of that Act.

#### Textual Amendments

- F28** Words in s. 17(1) substituted (1.7.1992) by [Road Traffic Act 1991 \(c. 40, SIF 107:1\)](#), s. 48, [Sch. 4 para. 88\(2\)](#); S.I. 1992/1286, [art. 2](#), Sch.
- F29** Words in s. 17(3) repealed (1.7.1992) by [Road Traffic Act 1991 \(c. 40, SIF 107:1\)](#), s. 83, [Sch.8](#); S.I. 1992/1286, [art. 2](#), Sch. Appendix
- F30** Words in s. 17(3) inserted (1.7.1992) by [Road Traffic Act 1991 \(c. 40, SIF 107:1\)](#), s. 48, [Sch. 4 para. 88\(3\)](#); S.I. 1992/1286, [art. 2](#), Sch.

#### Marginal Citations

- M14** 1985 c. 72.

### 18 Evidence by certificate as to registration of driving instructors and licences to give instruction. **E+W+S**

- (1) A certificate signed by the Registrar and stating that, on any date—
- (a) a person’s name was, or was not, in the register,
  - (b) the entry of a person’s name was made in the register or a person’s name was removed from it,
  - (c) a person was, or was not, the holder of a current licence under section 129 of the Road Traffic Act 1988, or
  - (d) a licence under that section granted to a person came into force or ceased to be in force,

shall be evidence, and in Scotland sufficient evidence, of the facts stated in the certificate in pursuance of this section.

- (2) A certificate so stating and purporting to be signed by the Registrar shall be deemed to be so signed unless the contrary is proved.
- (3) In this section “current licence”, “Registrar” and “register” have the same meanings as in Part V of the <sup>M15</sup>Road Traffic Act 1988.

#### Marginal Citations

- M15** 1988 c. 52.

### 19 Evidence of disqualification in Scotland. **E+W+S**

[<sup>F31</sup>(1)]In any proceedings in Scotland for an offence under section 103(1)(b) of the Road Traffic Act 1988 (driving while disqualified) a conviction or extract conviction—

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- (a) of which a copy has been served on the accused not less than fourteen days before his trial,
- (b) which purports to be signed by the clerk of court, and
- (c) which shows that the person named in it is disqualified for holding or obtaining a licence,

shall be sufficient evidence of the application of that disqualification to the accused, unless not [<sup>F32</sup>more than seven days after the date of service of the copy] he serves notice on the prosecutor that he denies that it applies to him.

[<sup>F33</sup>(2) A copy of a conviction or extract conviction served on the accused under subsection (1) above shall be served in such manner as may be prescribed by Act of Adjournal, and a written execution purporting to be signed by the person who served such copy conviction or extract conviction together with, where appropriate, the relevant post office receipt shall be sufficient evidence of service of such a copy.]

#### Textual Amendments

**F31** S. 19 renumbered s. 19(1) (31.3.1996) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I**, para. 171(a); S.I. 1996/517, **art. 3(2)**

**F32** Words in s. 19(1) (as renumbered by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I**, para. 171(a)) inserted (31.3.1996) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I**, para. 171(b); S.I. 1996/517, **art. 3(2)**

**F33** S. 19(2) inserted (31.3.1996) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I**, para. 171(c); S.I. 1996/517, **art. 3(2)**

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

**C14** S. 19 applied (20.10.1997) by 1997 c. 48, s. 15(1); S.I. 1997/2323, art. 3, **Sch. 1**

### [20] <sup>F34</sup>Speeding offences etc: admissibility of certain evidence. **E+W+S**

(1) Evidence (which in Scotland shall be sufficient evidence) of a fact relevant to proceedings for an offence to which this section applies may be given by the production of—

- (a) a record produced by a prescribed device, and
- (b) (in the same or another document) a certificate as to the circumstances in which the record was produced signed by a constable or by a person authorised by or on behalf of the chief officer of police for the police area in which the offence is alleged to have been committed;

but subject to the following provisions of this section.

(2) This section applies to—

- (a) an offence under section 16 of the Road Traffic Regulation Act 1984 consisting in the contravention of a restriction on the speed of vehicles imposed under section 14 of that Act;
- (b) an offence under subsection (4) of section 17 of that Act consisting in the contravention of a restriction on the speed of vehicles imposed under that section;
- (c) an offence under section 88(7) of that Act (temporary minimum speed limits);
- (d) an offence under section 89(1) of that Act (speeding offences generally);

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- (e) an offence under section 36(1) of the Road Traffic Act 1988 consisting in the failure to comply with an indication given by a light signal that vehicular traffic is not to proceed.
  - <sup>F35</sup> [ an offence under Part I or II of the Road Traffic Regulation Act 1984 of contravening or failing to comply with an order or regulations made under either of those Parts relating to the use of an area of road which is described as a bus lane or a route for use by buses only. ]
- (3) The Secretary of State may by order amend subsection (2) above by making additions to or deletions from the list of offences for the time being set out there; and an order under this subsection may make such transitional provision as appears to him to be necessary or expedient.
- (4) A record produced or measurement made by a prescribed device shall not be admissible as evidence of a fact relevant to proceedings for an offence to which this section applies unless—
- (a) the device is of a type approved by the Secretary of State, and
  - (b) any conditions subject to which the approval was given are satisfied.
- (5) Any approval given by the Secretary of State for the purposes of this section may be given subject to conditions as to the purposes for which, and the manner and other circumstances in which, any device of the type concerned is to be used.
- (6) In proceedings for an offence to which this section applies, evidence (which in Scotland shall be sufficient evidence)—
- (a) of a measurement made by a device, or of the circumstances in which it was made, or
  - (b) that a device was of a type approved for the purposes of this section, or that any conditions subject to which an approval was given were satisfied,
- may be given by the production of a document which is signed as mentioned in subsection (1) above and which, as the case may be, gives particulars of the measurement or of the circumstances in which it was made, or states that the device was of such a type or that, to the best of the knowledge and belief of the person making the statement, all such conditions were satisfied.
- (7) For the purposes of this section a document purporting to be a record of the kind mentioned in subsection (1) above, or to be a certificate or other document signed as mentioned in that subsection or in subsection (6) above, shall be deemed to be such a record, or to be so signed, unless the contrary is proved.
- (8) Nothing in subsection (1) or (6) above makes a document admissible as evidence in proceedings for an offence unless a copy of it has, not less than seven days before the hearing or trial, been served on the person charged with the offence; and nothing in those subsections makes a document admissible as evidence of anything other than the matters shown on a record produced by a prescribed device if that person, not less than three days before the hearing or trial or within such further time as the court may in special circumstances allow, serves a notice on the prosecutor requiring attendance at the hearing or trial of the person who signed the document.
- <sup>F36</sup>(8A) Where the proceedings for an offence to which this section applies are proceedings before a magistrates' court inquiring into an offence as examining justices this section shall have effect as if in subsection (8) the words from “and nothing” to the end of the subsection were omitted.]



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[<sup>F37</sup>(8A) As respects proceedings in Scotland, a copy of a document served on a person under subsection (8) above shall be served in such manner as may be prescribed by Act of Adjournal, and a written execution purporting to be signed by the person who served such copy document together with, where appropriate, the relevant post office receipt shall be sufficient evidence of service of such a copy.]

(9) In this section “prescribed device” means device of a description specified in an order made by the Secretary of State.

(10) The powers to make orders under subsections (3) and (9) above shall be exercisable by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

**Textual Amendments**

**F34** S. 20 substituted (1.7.1992) by [Road Traffic Act 1991 \(c. 40, SIF 107:1\)](#), [s. 23](#); [S.I. 1992/1286](#), [art. 2](#), [Sch.](#)

**F35** S. 20(2)(f) inserted (18.3.1997) by [S.I. 1997/384](#), [art. 2](#)

**F36** S. 20(8A) inserted (E.W.) (8.3.1997) by [1996 c. 25](#), [s. 47](#), [Sch. 1 Pt. II para. 38](#), [Pt. III para. 39](#) (with [s. 78\(1\)](#)); [S.I. 1997/683](#), [art. 1](#)

**F37** S. 20(8A) inserted (31.3.1996) by [1995 c. 20](#), [s. 117\(1\)](#), [Sch. 6 Pt. I para. 172](#) and repealed (S.) (1.4.1996) by [1995 c. 40](#), [ss. 4, 6, 7\(2\)](#), [Sch. 3 Pt. I para. 16\(3\)](#), [Sch. 5](#) (with [Sch. 3 paras. 1, 3, 6, 16, 17](#)); [S.I. 1996/517](#), [art. 3\(2\)](#)

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

**C15** S. 20(4) extended (1.7.1992) by [S.I. 1992/1286](#), [art. 4\(1\)](#)

**21 Proceedings in which evidence of one witness sufficient in Scotland.** E+W+S

(1) In any proceedings in Scotland for an offence to which this subsection applies the accused may be convicted on the evidence of one witness.

(2) Subsection (1) above applies to any offence created by or under an enactment and punishable on summary conviction, being an offence committed in respect of a vehicle—

- (a) by its being on a road during the hours of darkness without the lights or reflectors required by law, or
- (b) by its obstructing a road, or waiting, or being left or parked, or being loaded or unloaded, in a road, or
- (c) by the non-payment of a charge made at a street parking place, or
- (d) by its being used in contravention of any provision of an order made or having effect as if made under section 1 or 9 of the <sup>M16</sup>Road Traffic Regulation Act 1984, being a provision—
  - (i) as to the route to be followed by vehicles of the class to which that vehicle belongs, or
  - (ii) as to roads or parts of carriageways which are not to be used for traffic by such vehicles, or
  - (iii) as to the places where such vehicles may not turn so as to face in the opposite direction to that in which they were proceeding or as to the conditions under which such vehicles may so turn, or

<sup>F38</sup>(e) .....

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<sup>F38</sup>(f) .....

(3) Subsection (1) above also applies to any offence under section 35 [<sup>F39</sup>,36 or 172.]of the <sup>M17</sup>Road Traffic Act 1988.

(4) In subsection (2) above—

“hours of darkness” means the time between half-an-hour after sunset and half-an-hour before sunrise, and

“street parking place” means a parking place on land which forms part of a road.

(5) References in subsection (2) above to a class of vehicles are to be interpreted as references to a class defined or described by reference to any characteristics of the vehicles or to any other circumstances whatsoever.

#### Textual Amendments

**F38** S. 21(2)(e)(f) repealed (1.9.1994) by 1994 c. 22, ss. 65, 66, **Sch. 5 Pt. I** (with s. 57(4), Sch. 4)

**F39** Words in s. 21(3) substituted (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), s. 48, **Sch. 4 para. 89**; S.I. 1992/1286, art. 2, **Sch.**

#### Marginal Citations

**M16** 1984 c. 27.

**M17** 1988 c. 52.

## 22 Notification of disability. **E+W+S**

(1) If in any proceedings for an offence committed in respect of a motor vehicle it appears to the court that the accused may be suffering from any relevant disability or prospective disability (within the meaning of Part III of the Road Traffic Act 1988) the court must notify the Secretary of State.

(2) A notice sent by a court to the Secretary of State in pursuance of this section must be sent in such manner and to such address and contain such particulars as the Secretary of State may determine.

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

**C16** S. 22: power to exclude or modify conferred (1.7.1992) by Road Traffic Act 1988 (c. 52, SIF 107:1), s. **193A(2)(b)**(inserted (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), s. **46(2)**; S.I. 1992/1286, art. 2, Sch.).

### Verdict

## 23 Alternative verdicts in Scotland. **E+W+S**

(1) If on the trial on indictment in Scotland of a person for culpable homicide in connection with the driving of a [<sup>F40</sup> mechanically propelled vehicle] by him the jury are not satisfied that he is guilty of culpable homicide but are satisfied that he is guilty of an offence under section 2 of the Road Traffic Act 1988 ([<sup>F41</sup>dangerous] driving), they may find him guilty of that offence.

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<sup>F42</sup>(2) .....

- (3) If on the trial on indictment in Scotland of a person for stealing a motor vehicle the jury are not satisfied that he is guilty of stealing the motor vehicle but are satisfied that he is guilty of an offence under section 178 of that Act (taking motor vehicle without authority etc.), they may find him guilty of an offence under that section.

**Textual Amendments**

- F40** Words in s. 23(1) substituted (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), s. 48, **Sch. 4 para. 90(2)(a)**; S.I. 1992/1286, **art. 2**, Sch.
- F41** Word in s. 23(1) substituted (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), s. 48, **Sch. 4 para. 90(2)(b)**; S.I. 1992/1286, **art. 2**, Sch.
- F42** S. 23(2) repealed (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), s. 48, 83, Sch. 4 para. 90(3), **Sch.8**; S.I. 1992/1286, **art. 2**, **Sch.**Appendix

[<sup>F43</sup>24 **Alternative verdicts: general.** **E+W+S**

- (1) Where—
- (a) a person charged with an offence under a provision of the Road Traffic Act 1988 specified in the first column of the Table below (where the general nature of the offences is also indicated) is found not guilty of that offence, but
- (b) the allegations in the indictment or information (or in Scotland complaint) amount to or include an allegation of an offence under one or more of the provisions specified in the corresponding entry in the second column,
- he may be convicted of that offence or of one or more of those offences.

<b>Offence charged</b>	<b>Alternative</b>
Section 1 (causing death by dangerous driving)	Section 2 (dangerous driving)  Section 3 (careless, and inconsiderate, driving)
Section 2 (dangerous driving)	Section 3 (careless, and inconsiderate, driving)
Section 3A (causing death by careless driving when under influence of drink or drugs)	Section 3 (careless, and inconsiderate, driving)  Section 4(1) (driving when unfit to drive through drink or drugs)  Section 5(1)(a) (driving with excess alcohol in breath, blood or urine)  Section 7(6) (failing to provide specimen)
Section 4(1) (driving or attempting to drive when unfit to drive through drink or drugs)	Section 4(2) (being in charge of a vehicle when unfit to drive through drink or drugs)

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Section 5(1)(a) (driving or attempting to drive with excess alcohol in breath, blood or urine)

Section 5(1)(b) (being in charge of a vehicle with excess alcohol in breath, blood or urine)

Section 28 (dangerous cycling)

Section 29 (careless, and inconsiderate, cycling)

- (2) Where the offence with which a person is charged is an offence under section 3A of the Road Traffic Act 1988, subsection (1) above shall not authorise his conviction of any offence of attempting to drive.
- (3) Where a person is charged with having committed an offence under section 4(1) or 5(1)(a) of the Road Traffic Act 1988 by driving a vehicle, he may be convicted of having committed an offence under the provision in question by attempting to drive.
- (4) Where by virtue of this section a person is convicted before the Crown Court of an offence triable only summarily, the court shall have the same powers and duties as a magistrates' court would have had on convicting him of that offence.
- (5) Where, in Scotland, by virtue of this section a person is convicted under solemn procedure of an offence triable only summarily, the penalty imposed shall not exceed that which would have been competent on a conviction under summary procedure.
- (6) This section has effect without prejudice to section 6(3) of the Criminal Law Act 1967 (alternative verdicts on trial on indictment), [F44sections 295, 138(4), 256 and 293 of and Schedule 3 to the Criminal Procedure (Scotland) Act 1995]] and section 23 of this Act.

#### Textual Amendments

**F43** S. 24 substituted (1.7.1992) by [Road Traffic Act 1991 \(c. 40, SIF 107:1\)](#), s. 24; S.I. 1992/1286, art. 2, [Sch.](#)

**F44** Words in s. 24(6) substituted (1.4.1996) by [1995 c. 40, ss. 5, 7\(2\)](#), [Sch. 4 para. 71\(3\)](#)

#### After conviction

## 25 Information as to date of birth and sex. **E+W+S**

- (1) If on convicting a person of an offence involving obligatory or discretionary disqualification or of such other offence as may be prescribed by regulations under section 105 of the <sup>M18</sup>Road Traffic Act 1988 the court does not know his date of birth, the court must order him to give that date to the court in writing.
- (2) If a court convicting a person of such an offence in a case where—
  - (a) notification has been given to the clerk of a court in pursuance of section 12(2) of the <sup>M19</sup>Magistrates' Courts Act 1980 (written pleas of guilty), or written intimation of a plea of guilty has been given in pursuance of section 334(3) of the <sup>M20</sup>Criminal Procedure (Scotland) Act 1975, and
  - (b) the notification or intimation did not include a statement of the person's sex, does not know the person's sex, the court must order the person to give that information to the court in writing.

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- (3) A person who knowingly fails to comply with an order under subsection (1) or (2) above is guilty of an offence.
- (4) Nothing in section 56(5) of the<sup>M21</sup>Criminal Justice Act 1967 (where magistrates' court commits a person to the Crown Court to be dealt with, certain powers and duties transferred to that court) applies to any duty imposed upon a magistrates' court by subsection (1) or (2) above.
- (5) Where a person has given his date of birth in accordance with this section or section 8 of this Act, the Secretary of State may serve on that person a notice in writing requiring him to provide the Secretary of State—
  - (a) with such evidence in that person's possession or obtainable by him as the Secretary of State may specify for the purpose of verifying that date, and
  - (b) if his name differs from his name at the time of his birth, with a statement in writing specifying his name at that time.
- (6) A person who knowingly fails to comply with a notice under subsection (5) above is guilty of an offence.
- (7) A notice to be served on any person under subsection (5) above may be served on him by delivering it to him or by leaving it at his proper address or by sending it to him by post; and for the purposes of this subsection and section 7 of the<sup>M22</sup>Interpretation Act 1978 in its application to this subsection the proper address of any person shall be his latest address as known to the person serving the notice.

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

**C17** S. 25: power to exclude or modify conferred (1.7.1992) by [Road Traffic Act 1988 \(c. 52, SIF 107:1\)](#), [s. 193A\(2\)\(b\)](#) (inserted (1.7.1992) by [Road Traffic Act 1991 \(c. 40, SIF 107:1\)](#), [s. 46\(2\)](#); S.I. 1992/1286, [art. 2](#), Sch.).

#### Marginal Citations

**M18** 1988 c. 52.  
**M19** 1980 c. 43.  
**M20** 1975 c. 21.  
**M21** 1967 c. 80.  
**M22** 1978 c. 30.

### [<sup>F45</sup>26 Interim disqualification. **E+W+S**

- (1) Where a magistrates' court—
  - (a) commits an offender to the Crown Court under subsection (1) of section 56 of the Criminal Justice Act 1967, or any enactment to which that section applies, or
  - (b) remits an offender to another magistrates' court under section 39 of the Magistrates' Courts Act 1980,
 to be dealt with for an offence involving obligatory or discretionary disqualification, it may order him to be disqualified until he has been dealt with in respect of the offence.
- (2) Where a court in England and Wales—

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- (a) defers passing sentence on an offender under section 1 of the Powers of Criminal Courts Act 1973 in respect of an offence involving obligatory or discretionary disqualification, or
- (b) adjourns after convicting an offender of such an offence but before dealing with him for the offence,

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

(3) Where a court in Scotland—

- (a) adjourns a case under section 179 or section 380 of the Criminal Procedure (Scotland) Act 1975 (for inquiries to be made or to determine the most suitable method of dealing with the offender);
- (b) remands a person in custody or on bail under section 180 or section 381 of the Criminal Procedure (Scotland) Act 1975 (to enable a medical examination and report to be made);
- (c) defers sentence under section 219 or section 432 of the Criminal Procedure (Scotland) Act 1975;
- (d) remits a convicted person to the High Court for sentence under section 104 of the Criminal Procedure (Scotland) Act 1975,

in respect of an offence involving obligatory or discretionary disqualification, it may order the accused to be disqualified until he has been dealt with in respect of the offence.

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

(5) In Scotland, where a person is disqualified under this section where section 219 or section 432 of the Criminal Procedure (Scotland) Act 1975 (deferred sentence) applies and the period of deferral exceeds 6 months, subsection (4) above shall not prevent the imposition under this section of any period of disqualification which does not exceed the period of deferral.

(6) Where a court orders a person to be disqualified under this section (“the first order”), no court shall make a further order under this section in respect of the same offence or any offence in respect of which an order could have been made under this section at the time the first order was made.

(7) Where a court makes an order under this section in respect of any person it must—

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

(8) If the holder of the licence has not caused it and its counterpart to be delivered, or has not posted them, in accordance with section 7 of this Act and does not produce the licence and counterpart as required under subsection (7) above, then he is guilty of an offence.

(9) Subsection (8) above does not apply to a person who—

- (a) satisfies the court that he has applied for a new licence and has not received it, or

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- (b) surrenders to the court a current receipt for his licence and its counterpart issued under section 56 of this Act, and produces the licence and counterpart to the court immediately on their return.
- (10) Where a court makes an order under this section in respect of any person, sections 44(1) and [<sup>F46</sup>, 47(2) and 91A(5)] of this Act and section 109(3) of the Road Traffic Act 1988 (Northern Ireland drivers' licences) shall not apply in relation to the order, but—
- (a) the court must send notice of the order to the Secretary of State, and
- (b) if the court which deals with the offender determines not to order him to be disqualified under section 34 or 35 of this Act, it must send notice of the determination to the Secretary of State.
- (11) A notice sent by a court to the Secretary of State in pursuance of subsection (10) above must be sent in such manner and to such address and contain such particulars as the Secretary of State may determine.
- (12) Where on any occasion a court deals with an offender—
- (a) for an offence in respect of which an order was made under this section, or
- (b) for two or more offences in respect of any of which such an order was made, any period of disqualification which is on that occasion imposed under section 34 or 35 of this Act shall be treated as reduced by any period during which he was disqualified by reason only of an order made under this section in respect of any of those offences.
- (13) Any reference in this or any other Act (including any Act passed after this Act) to the length of a period of disqualification shall, unless the context otherwise requires, be construed as a reference to its length before any reduction under this section.
- (14) In relation to licences which came into force before 1st June 1990, the references in this section to counterparts of licences shall be disregarded.

#### Textual Amendments

**F45** S. 26 substituted (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), s. 25; S.I. 1992/1286, art. 2, Sch.

**F46** Words in s. 26(10) substituted (1.1.1997) by S.I. 1996/1974, reg. 3, Sch. 2 para. 2

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

**C18** S. 26: power to exclude or modify conferred (1.7.1992) by Road Traffic Act 1988 (c. 52, SIF 107:1), s. 193A(2)(b) (inserted (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), s. 46(2); S.I. 1992/1286, art. 2, Sch.).

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## PART II E+W+S

### SENTENCE

#### Introductory

#### 27 Production of licence. E+W+S

(1) Where a person who is the holder of a licence is convicted of an offence involving obligatory [<sup>F47</sup>or discretionary disqualification, and a court proposes to make an order disqualifying him or an order under section 44 of this Act, the court must, unless it has already received them,], require the licence [<sup>F48</sup>and its counterpart] to be produced to it.

<sup>F49</sup>(2) .....

(3) If the holder of the licence has not caused it [<sup>F50</sup>and its counterpart] to be delivered, or posted it [<sup>F50</sup>and its counterpart], in accordance with section 7 of this Act and does not produce it [<sup>F50</sup>and its counterpart] as required [<sup>F51</sup>under this section or section 44 of the Powers of Criminal Courts Act 1973, or section 223A or 436A of the Criminal Procedure (Scotland) Act 1975]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 [<sup>F52</sup>it and its counterpart are] produced to the court and shall, while suspended, be of no effect.

(4) Subsection (3) above does not apply where the holder of the licence—

- (a) has caused a current receipt for the licence [<sup>F53</sup>and its counterpart] issued under section 56 of this Act to be delivered to the clerk of the court not later than the day before the date appointed for the hearing, or
- (b) has posted such a receipt, at such time that in the ordinary course of post it would be delivered not later than that day, in a letter duly addressed to the 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 [<sup>F54</sup>and its counterpart] to the court immediately on [<sup>F55</sup>their] return.

#### Textual Amendments

**F47** Words in s. 27(1) substituted (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), s. 48, **Sch. 4 para. 91(2)**; S.I. 1992/1286, **art. 2**,Sch.

**F48** Words inserted by S.I. 1990/144, regs. 2(2), 3, **Sch. 2 para. 3(a)**

**F49** S. 27(2) repealed (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), ss. 48, 83, Sch. 4 para. 91(3), **Sch.8**; S.I. 1992/1286, **art. 2**,Sch.

**F50** Words inserted by S.I. 1990/144, regs. 2(2), 3, **Sch. 2 para. 3(b)**

**F51** Words in s. 27(3) inserted (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), s. 48, **Sch. 4 para. 91(4)**; S.I. 1992/1286, **art. 2**,Sch.

**F52** Words substituted by S.I. 1990/144, regs. 2(2), 3, **Sch. 2 para. 3(b)**

**F53** Words inserted by S.I. 1990/144, regs. 2(2), 3, **Sch. 2 para. 3(c)(i)**

**F54** Words inserted by S.I. 1990/144, regs. 2(2), 3, **Sch. 2 para. 3(c)(ii)(iii)**

**F55** Word substituted by S.I. 1990/144, regs. 2(2), 3, **Sch. 2 para. 3(c)(ii)(iii)**



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

- C19** S. 27: power to exclude or modify conferred (1.7.1992) by Road Traffic Act 1988 (c. 52, SIF 107:1), **s. 193A(2)(b)** (inserted (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), **s. 46(2)**; S.I. 1992/1286, **art. 2**, Sch.).
- C20** S. 27(1)(2) applied with modifications by S.I. 1987/1378, **reg. 25(3)** (as amended by S.I. 1990/842, **reg. 9**)  
S. 27(1)(3) applied (with modifications) (12.11.1999) by S.I. 1999/2864, **reg. 80(5)(b)**
- C21** S. 27(3) applied with modifications by S.I. 1987/1378, **reg. 25(3)** (as amended by S.I. 1990/842, **reg. 9**)  
S. 27(3) applied with modifications (1.1.1998) (EW) by 1997 c. 43, **s. 39(5)(b)**, 40(6); S.I. 1997/2200, **art. 3(b)(c)** (with art. 5)
- C22** S. 27(3) extended by Powers of Criminal Courts Act 1973 (c. 62, SIF 39:1), **s. 44(3)(a)** (as amended by Road Traffic (Consequential Provisions) Act 1988 (c. 54, SIF 107:1), s. 4, **Sch. 3 para. 11(b)**)  
S. 27 extended (1.1.1998) by 1997 c. 43, **ss. 39(5)(b)**, 40(6); S.I. 1997/2200, **arts. 3(b)(c)**, 5

#### [<sup>F56</sup>28] **Penalty points to be attributed to an offence.** **E+W+S**

- (1) Where a person is convicted of an offence involving obligatory endorsement, then, subject to the following provisions of this section, the number of penalty points to be attributed to the offence is—
  - (a) the number shown in relation to the offence in the last column of Part I or Part II of Schedule 2 to this Act, or
  - (b) where a range of numbers is shown, a number within that range.
- (2) Where a person is convicted of an offence committed by aiding, abetting, counselling or procuring, or inciting to the commission of, an offence involving obligatory disqualification, then, subject to the following provisions of this section, the number of penalty points to be attributed to the offence is ten.
- (3) Where both a range of numbers and a number followed by the words “(fixed penalty)” is shown in the last column of Part I of Schedule 2 to this Act in relation to an offence, that number is the number of penalty points to be attributed to the offence for the purposes of sections 57(5) and 77(5) of this Act; and, where only a range of numbers is shown there, the lowest number in the range is the number of penalty points to be attributed to the offence for those purposes.
- (4) Where a person is convicted (whether on the same occasion or not) of two or more offences committed on the same occasion and involving obligatory endorsement, the total number of penalty points to be attributed to them is the number or highest number that would be attributed on a conviction of one of them (so that if the convictions are on 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 subsection) subsection (4) above would apply to two or more offences, the court may if it thinks fit determine that that subsection shall not apply to the offences (or, where three or more offences are concerned, to any one or more of them).
- (6) Where a court makes such a determination it shall state its reasons in open court and, if it is a magistrates’ court, or in Scotland a court of summary jurisdiction, shall cause them to be entered in the register (in Scotland, record) of its proceedings.
- (7) The Secretary of State may by order made by statutory instrument—

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- (a) alter a number or range of numbers shown in relation to an offence in the last column of Part I or Part II of Schedule 2 to this Act (by substituting one number or range for another, a number for a range, or a range for a number),
  - (b) where a range of numbers is shown in relation to an offence in the last column of Part I, add or delete a number together with the words “(fixed penalty)”, and
  - (c) alter the number of penalty points shown in subsection (2) above;
- and an order under this subsection may provide for different numbers or ranges of numbers to be shown in relation to the same offence committed in different circumstances.
- (8) Where the Secretary of State exercises his power under subsection (7) above by substituting or adding a number which appears together with the words “(fixed penalty)”, that number shall not exceed the lowest number in the range shown in the same entry.
  - (9) No order shall be made under subsection (7) above unless a draft of it has been laid before and approved by resolution of each House of Parliament.]

#### Textual Amendments

**F56** S. 28 substituted (1.7.1992) by [Road Traffic Act 1991 \(c. 40, SIF 107:1\)](#), [s. 27](#); [S.I. 1992/1286](#), [art. 2](#), Sch.

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

**C23** S. 28: power to exclude or modify conferred (1.7.1992) by [Road Traffic Act 1988 \(c. 52, SIF 107:1\)](#), [s. 193A\(2\)\(b\)](#)(inserted (1.7.1992)) by [Road Traffic Act 1991 \(c. 40, SIF 107:1\)](#), [s. 46\(2\)](#); [S.I. 1992/1286](#), [art. 2](#), Sch.).

### [<sup>F57</sup> 29 **Penalty points to be taken into account on conviction.** **E+W+S**

- (1) Where a person is convicted of an offence involving obligatory endorsement, the penalty points to be taken into account on that occasion are (subject to subsection (2) below)—
  - (a) any that are to be attributed to the offence or offences of which he is convicted disregarding any offence in respect of which an order under section 34 of this Act is made, and
  - (b) any that were on a previous occasion ordered to be endorsed on the counterpart of any licence held by him, unless the offender has since that occasion and before the conviction been disqualified under section 35 of this Act.
- (2) If any of the offences was committed more than three years before another, the penalty points in respect of that offence shall not be added to those in respect of the other.
- (3) In relation to licences which came into force before 1st June 1990, the reference in subsection (1) above to the counterpart of a licence shall be construed as a reference to the licence itself.]

#### Textual Amendments

**F57** S. 29 substituted (1.7.1992) by [Road Traffic Act 1991 \(c. 40, SIF 107:1\)](#), [s.28](#); [S.I. 1992/1286](#), [art. 2](#), Sch.

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

- C24** S. 29: power to exclude or modify conferred (1.7.1992) by Road Traffic Act 1988 (c. 52, SIF 107:1), s. 193A(2)(b) (inserted (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), s. 46(2); S.I. 1992/1286, art. 2, Sch.)  
S. 29 modified (1.7.1992) by S.I. 1992/1286, art. 6(3)

**30 Penalty points: modification where fixed penalty also in question. E+W+S**

- (1) Sections 28 and 29 of this Act shall have effect subject to this section in any case where—
- (a) a person is convicted of an offence involving [<sup>F58</sup>obligatory endorsement], and
  - (b) the court is satisfied that [<sup>F59</sup>the counterpart of] his licence has been or is liable to be endorsed under section 57 or 77 of this Act in respect of an offence (referred to in this section as the “connected offence”) committed on the same occasion as the offence of which he is convicted.
- (2) <sup>F60</sup> . . . the number of penalty points to be attributed to the offence of which he is convicted is—
- (a) the number of penalty points to be attributed to that offence under section [<sup>F61</sup>28] of this Act apart from this section, less
  - (b) the number of penalty points required to be endorsed on [<sup>F62</sup>the counterpart of] his licence under section 57 or 77 of this Act in respect of the connected offence [<sup>F63</sup>(except so far as they have already been deducted by virtue of this paragraph)].
- <sup>F64</sup>(3) . . . . .

**Textual Amendments**

- F58** Words in s. 30(1)(a) substituted (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), s. 48, Sch. 4 para. 92(2); S.I. 1992/1286, art. 2, Sch.
- F59** Words inserted by S.I. 1990/144, regs. 2(2), 3, Sch. 2 para. 5(a)
- F60** Words in s. 30(2) repealed (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), ss. 48, 83, Sch. 4 para. 92(3)(a), Sch. 8; S.I. 1992/1286, art. 2, Sch.
- F61** Word in s. 30(2)(a) substituted (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), s. 48, Sch. 4 para. 92(3)(b); S.I. 1992/1286, art. 2, Sch.
- F62** Words inserted by S.I. 1990/144, regs. 2(2), 3, Sch. 2 para. 5(b)
- F63** Words in s. 30(2)(b) added (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), s. 48, Sch. 4 para. 92(3)(c); S.I. 1992/1286, art. 2, Sch.
- F64** S. 30(3) repealed (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), ss. 48, 83, Sch. 4 para. 92(4), Sch. 8; S.I. 1992/1286, art. 2, Sch.

**31 Court may take particulars endorsed on licence into consideration. E+W+S**

- (1) Where a person is convicted of an offence involving [<sup>F65</sup>obligatory or discretionary disqualification] and his licence [<sup>F66</sup>and its counterpart are] produced to the court—
- (a) any existing endorsement on [<sup>F67</sup>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.

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- (2) This section has effect notwithstanding anything in [F68section 166(1) to (6) of the Criminal Procedure (Scotland) Act 1995] (requirements as to notices of penalties and previous convictions).

#### Textual Amendments

- F65** Words in s. 31(1) substituted (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), s. 48, **Sch. 4 para. 93**; S.I. 1992/1286, art. 2, **Sch.**
- F66** Words substituted by S.I. 1990/144, regs. 2(2), 3, **Sch. 2 para. 6(a)(b)**
- F67** Words inserted by S.I. 1990/144, regs. 2(2), 3, **Sch. 2 para. 6(a)(b)**
- F68** Words in s. 31(2) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 71(4)**

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

- C25** S. 31: power to exclude or modify conferred (1.7.1992) by Road Traffic Act 1988 (c. 52, SIF 107:1), s. **193A(2)(b)**(inserted (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), s. **46(2)**; S.I. 1992/1286, art. 2, **Sch.**).

## 32 **In Scotland, court may take extract from licensing records into account.** **E+W** **+S**

- (1) Subsections (2) to (5) below apply where a person is convicted in Scotland of an offence involving [F69obligatory or discretionary disqualification]but his licence [F70and its counterpart are] not produced to the court.
- (2) The court may, in determining what order to make in pursuance of the conviction, take into consideration (subject to subsection (3) below)—
- (a) particulars of any previous conviction or disqualification pertaining to him, and
  - (b) any penalty points ordered to be endorsed on [F71the counterpart of] any licence held by him which are to be taken into account under section 29 of this Act,
- which are specified in a document purporting to be a note of information contained in the records maintained by the Secretary of State in connection with his functions under Part III of the <sup>M23</sup>Road Traffic Act 1988.
- (3) If the prosecutor lays before the court such a document as is mentioned in subsection (2) above, the court or the clerk of court must ask the accused if he admits the accuracy of the particulars relating to him contained in the document.
- (4) Where the accused admits the accuracy of any particulars, the prosecutor need not adduce evidence in proof of those particulars, and the admission must be entered in the record of the proceedings.
- (5) Where the accused does not admit the accuracy of any particulars, the prosecutor must, unless he withdraws those particulars, adduce evidence in proof of them, either then or at any other diet.
- (6) This section has effect notwithstanding anything in [F72section 166(1) to (6) of the Criminal Procedure (Scotland) Act 1995] (requirements as to notices of <sup>F73</sup>... previous convictions).

**Status:** Point in time view as at 18/03/1997. This version of this Act contains provisions that are prospective.

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#### Textual Amendments

- F69** Words in s. 32(1) substituted (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), s. 48, **Sch. 4 para. 94**; S.I. 1992/1286, art. 2, **Sch.**
- F70** Words substituted by S.I. 1990/144, regs. 2(2), 3, **Sch. 2 para. 7(a)**
- F71** Words inserted by S.I. 1990/144, regs. 2(2), 3, **Sch. 2 para. 7(b)**
- F72** Words in s. 32(6) substituted (1.4.1996) by 1995 c. 40, s. 5, 7(2), **sch. 4 para. 71(5)**
- F73** Words in s. 32(6) repealed (31.3.1996) by 1995 c. 20, s. 117, **Sch. 6 Pt. I**, para. 173(b); S.I. 1996/517, **art. 3(2)**

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

- C26** S. 32: power to exclude or modify conferred (1.7.1992) by Road Traffic Act 1988 (c. 52, SIF 107:1), **s. 193A(2)(b)**(inserted (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), **s. 46(2)**; S.I. 1992/1286, **art. 2, Sch.**).

#### Marginal Citations

- M23** 1988 c. 52.

### *Fine and imprisonment*

#### **33 Fine and imprisonment. E+W+S**

- (1) Where a person is convicted of an offence against a provision of the Traffic Acts specified in column 1 of Part I of Schedule 2 to this Act or regulations made under any such provision, the maximum punishment by way of fine or imprisonment which may be imposed on him is that shown in column 4 against the offence and (where appropriate) the circumstances or the mode of trial there specified.
- (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.

#### **[<sup>F74</sup>33A Forfeiture of vehicles: Scotland. S**

- (1) Where a person commits an offence to which this subsection applies by—
  - (a) driving, attempting to drive, or being in charge of a vehicle; or
  - (b) failing to comply with a requirement made under section 7 of the Road Traffic Act 1988 (failure to provide specimen for analysis or laboratory test) in the course of an investigation into whether the offender had committed an offence while driving, attempting to drive or being in charge of a vehicle, or
  - (c) failing, as the driver of a vehicle, to comply with subsections (2) and (3) of section 170 of the Road Traffic Act 1988 (duty to stop and give information or report accident),

the court may, on an application under this subsection, make an order forfeiting the vehicle concerned; and any vehicle forfeited under this subsection shall be disposed of as the court may direct.

- (2) Subsection (1) above applies—
  - (a) to an offence under the Road Traffic Act 1988 which is punishable with imprisonment; and
  - (b) to an offence of culpable homicide.

*Status:* Point in time view as at 18/03/1997. This version of this Act contains provisions that are prospective.

*Changes to legislation:* Road Traffic Offenders Act 1988 is up to date with all changes known to be in force on or before 07 August 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)

- (3) An application under subsection (1) above shall be at the instance of the prosecutor made when he moves for sentence (or, if the person has been remitted for sentence under section 195 of the Criminal Procedure (Scotland) Act 1995) made before sentence is pronounced.
- (4) Where—
- (a) the court is satisfied, on an application under this subsection by the prosecutor—
- (i) that proceedings have been, or are likely to be, instituted against a person in Scotland for an offence to which subsection (1) above applies allegedly committed in the manner specified in paragraph (a), (b) or (c) of that subsection; and
- (ii) that there is reasonable cause to believe that a vehicle specified in the application is to be found in a place or in premises so specified; and
- (b) it appears to the court that there are reasonable grounds for thinking that in the event of the person being convicted of the offence an order under subsection (1) above might be made in relation to the vehicle,
- the court may grant a warrant authorising a person named therein to enter and search the place or premises and seize the vehicle.
- (5) Where the court has made an order under subsection (1) above for the forfeiture of a vehicle, the court or any justice may, if satisfied on evidence on oath—
- (a) that there is reasonable cause to believe that the vehicle is to be found in any place or premises; and
- (b) that admission to the place or premises has been refused or that a refusal of such admission is apprehended,
- issue a warrant of search which may be executed according to law.
- (6) In relation to summary proceedings, the reference in subsection (5) above to a justice includes a reference to the sheriff and to a magistrate.
- (7) Part II of the Proceeds of Crime (Scotland) Act 1995 shall not apply in respect of a vehicle in relation to which this section applies.
- (8) This section extends to Scotland only.]

#### Textual Amendments

**F74** S. 33A inserted (1.4.1996) by 1995 c. 40, s. 5, 7(2), Sch. 4 para. 71(6)

### *Disqualification*

#### **34 Disqualification for certain offences. E+W+S**

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

[<sup>F75</sup>(1A) Where a person is convicted of an offence under section 12A of the Theft Act 1968 (aggravated vehicle-taking), the fact that he did not drive the vehicle in question at

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any particular time or at all shall not be regarded as a special reason for the purposes of subsection (1) above.]

[<sup>F76</sup>(2) Where a person is convicted of an offence involving discretionary disqualification, and either—

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

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

(3) Where a person convicted of an offence under any of the following provisions of the <sup>M24</sup>Road Traffic Act 1988, that is—

[<sup>F77</sup>(aa) section 3A (causing death by careless driving when under the influence of drink or drugs),]

- (a) section 4(1) (driving or attempting to drive while unfit),
- (b) section 5(1)(a) (driving or attempting to drive with excess alcohol), and
- (c) section 7(6) (failing to provide a specimen) where that is an offence involving obligatory disqualification,

has within the ten years immediately preceding the commission of the offence been convicted of any such offence, subsection (1) above shall apply in relation to him as if the reference to twelve months were a reference to three years.

[<sup>F78</sup>(4) Subject to subsection (3) above, subsection (1) above shall apply as if the reference to twelve months were a reference to two years—

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

(4A) For the purposes of subsection (4)(b) above there shall be disregarded any disqualification imposed under section 26 of this Act or section 44 of the Powers of Criminal Courts Act 1973 or section 223A or 436A of the Criminal Procedure (Scotland) Act 1975 (offences committed by using vehicles) and any disqualification imposed in respect of an offence of stealing a motor vehicle, an offence under section 12 or 25 of the Theft Act 1968, an offence under section 178 of the Road Traffic Act 1988, or an attempt to commit such an offence.]

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

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

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### Textual Amendments

- F75** S. 34(1A) inserted (1.4.1992) by Aggravated Vehicle-Taking Act 1992 (c. 11), s. 3(2); S.I. 1992/764, art. 2
- F76** S. 34(2) substituted (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), s. 29(2); S.I. 1992/1286, art. 2, Sch (with art. 6(5)).
- F77** S. 34(3)(aa) inserted (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), s. 29(3); S.I. 1992/1286, art. 2, Sch (with art. 6(5)).
- F78** S. 34(4)(4A) substituted (1.7.1992) for s. 34(4) by Road Traffic Act 1991 (c. 40, SIF 107:1), s. 29(4); S.I. 1992/1286, art. 2, Sch (with art. 6(5)).

### Modifications etc. (not altering text)

- C27** S. 34: power to exclude or modify conferred (1.7.1992) by Road Traffic Act 1988 (c. 52, SIF 107:1), s. 193A(2)(b) inserted (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), s. 46(2); S.I. 1992/1286, art. 2, Sch (with art. 6(5)).

### Marginal Citations

- M24** 1988 c. 52.

## [<sup>F79</sup>34A Reduced disqualification period for attendance on courses. **E+W+S**

- (1) This section applies where—
- (a) a person is convicted of an offence under section 3A (causing death by careless driving when under influence of drink or drugs), 4 (driving or being in charge when under influence of drink or drugs), 5 (driving or being in charge with excess alcohol) or 7 (failing to provide a specimen) of the Road Traffic Act 1988, and
  - (b) the court makes an order under section 34 of this Act disqualifying him for a period of not less than twelve months.
- (2) Where this section applies, the court may make an order that the period of disqualification imposed under section 34 shall be reduced if, by a date specified in the order under this section, the offender satisfactorily completes a course approved by the Secretary of State for the purposes of this section and specified in the order.
- (3) The reduction made by an order under this section in a period of disqualification imposed under section 34 shall be a period specified in the order of not less than three months and not more than one quarter of the unreduced period (and accordingly where the period imposed under section 34 is twelve months, the reduced period shall be nine months).
- (4) The court shall not make an order under this section 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.



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- (5) The date specified in an order under this section as the latest date for completion of a course must be at least two months before the last day of the period of disqualification as reduced by the order.
- (6) An order under this section shall name the petty sessions area (or in Scotland the sheriff court district or, where an order has been made under this section by a stipendiary magistrate, the commission area) in which the offender resides or will reside.]

#### Textual Amendments

**F79** Ss. 34A-34C inserted (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), s.30; S.I. 1992/1286, art. 2, Sch. (with art. 6(5))

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

**C28** S. 34A restricted (temp.) (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), s. 31(1)(2)(4); S.I. 1992/1286, art. 2, Sch. (with art. 6(5)).

**C29** S. 34A modified (temp.) (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), s. 31(5); S.I. 1992/1286, art. 2, Sch. (with art. 6(5)).

**C30** Ss. 34 - 48: power to exclude or modify conferred (1.7.1992) by Road Traffic Act 1988 (c. 52, SIF 107:1), s. 193A(2)(b) (inserted (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), s. 46(2); S.I. 1992/1286, art. 2, Sch. (with art. 6(5)))

**C31** S. 34A: transfer of certain functions (1.7.1999) by S.I. 1999/672, art. 2, Sch. 1

#### <sup>F80</sup> **34B Certificates of completion of courses.** **E+W+S**

- (1) An offender shall be regarded for the purposes of section 34A of this Act as having completed a course satisfactorily if (and only if) a certificate that he has done so is received by the clerk of the supervising court before the end of the period of disqualification imposed under section 34.
- (2) If the certificate referred to in subsection (1) above is received by the clerk of the supervising court before the end of the period of disqualification imposed under section 34 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 subsection (1) above 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 Secretary of State.
- (4) A course organiser shall give the certificate mentioned in subsection (1) above to the offender not later than fourteen 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 subsection (1) above, he shall give written notice of his decision to the offender as soon as possible, and in any event not later than fourteen days after the date specified in the order as the latest date for completion of the course.

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- (6) An offender to whom a notice is given under subsection (5) above may, within such period as may be prescribed by rules of court, apply to the supervising court for a declaration that the course organiser's decision not to give a certificate was contrary to subsection (4) above; and if the court grants the application section 34A of this Act shall have effect as if the certificate had been duly received by the clerk of the court.
- (7) If fourteen 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 subsection (1) above nor a notice under subsection (5) above, the offender may, within such period as may be prescribed by rules of court, apply to the supervising court for a declaration that the course organiser is in default; and if the court grants the application section 34A of this Act shall have effect as if the certificate had been duly received by the clerk of the court.
- (8) A notice under subsection (5) above shall specify the ground on which it is given, and the Secretary of State may by regulations make provision as to the form of notices under that subsection and as to the circumstances in which they are to be treated as given.
- (9) Where the clerk of a court receives a certificate of the kind referred to in subsection (1) above, or a court grants an application under subsection (6) or (7) above, the clerk or court must send notice of that fact to the Secretary of State; and the notice must be sent in such manner and to such address, and must contain such particulars, as the Secretary of State may determine.

#### Textual Amendments

**F80** Ss. 34A-34C inserted (1.7.1992) by [Road Traffic Act 1991 \(c. 40, SIF 107:1\)](#), [s.30](#); [S.I. 1992/1286](#), [art. 2](#), Sch. (with art. 6(5))

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

**C32** Ss. 34 - 48: power to exclude or modify conferred (1.7.1992) by [Road Traffic Act 1988 \(c. 52, SIF 107:1\)](#), [s. 193A\(2\)\(b\)](#) (inserted (1.7.1992) by [Road Traffic Act 1991 \(c. 40, SIF 107:1\)](#), [s. 46\(2\)](#); [S.I. 1992/1286](#), [art. 2](#), Sch. (with art. 6(5)))

**C33** [S. 34B](#) (except subsection (9)): transfer of certain functions (1.7.1999) by [S.I. 1999/672](#), [art. 2](#), [Sch. 1](#)

### <sup>F81</sup> 34C Provisions supplementary to sections 34A and 34B. **E+W+S**

- (1) The Secretary of State may issue guidance to course organisers, or to any category of course organiser as to the conduct of courses approved for the purposes of section 34A of this Act; and—
  - (a) course organisers shall have regard to any guidance given to them under this subsection, and
  - (b) in determining for the purposes of section 34B(6) whether any instructions or requirements of an organiser were reasonable, a court shall have regard to any guidance given to him under this subsection.
- (2) In sections 34A and 34B and this section—
 

“course organiser”, in relation to a course, means the person who, in accordance with regulations made by the Secretary of State, is responsible for giving the certificates mentioned in section 34B(1) in respect of the completion of the course;

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“petty sessions area” has the same meaning as in the Magistrates’ Courts Act 1980;

“supervising court”, in relation to an order under section 34A, means—

- (a) in England and Wales, a magistrates’ court acting for the petty sessions area named in the order as the area where the offender resides or will reside;
- (b) in Scotland, the sheriff court for the district where the offender resides or will reside or, where the order is made by a stipendiary magistrate and the offender resides or will reside within his commission area, the district court for that area,

and any reference to the clerk of a magistrates’ court is a reference to the clerk to the justices for the petty sessions area for which the court acts.

- (3) Any power to make regulations under section 34B or this section—
  - (a) includes power to make different provision for different cases, and to make such incidental or supplemental provision as appears to the Secretary of State to be necessary or expedient;
  - (b) shall be exercisable by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### Textual Amendments

**F81** Ss. 34A-34C inserted (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), s.30; S.I. 1992/1286, art. 2, Sch. (with art. 6(5))

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

**C34** Ss. 34 - 48: power to exclude or modify conferred (1.7.1992) by Road Traffic Act 1988 (c. 52, SIF 107:1), s. 193A(2)(b) (inserted (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), s. 46(2); S.I. 1992/1286, art. 2, Sch. (with art. 6(5)))

**C35** S. 34C: transfer of certain functions (1.7.1999) by S.I. 1999/672, art. 2, Sch. 1

### 35 Disqualification for repeated offences. **E+W+S**

(1) Where—

- (a) a person is convicted of an offence [<sup>F82</sup>to which this subsection applies], and
- (b) the penalty points to be taken into account on that occasion number twelve or more,

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

[<sup>F83</sup>(1A) Subsection (1) above applies to—

- (a) an offence involving discretionary disqualification and obligatory endorsement, and
- (b) an offence involving obligatory disqualification in respect of which no order is made under section 34 of this Act.]

(2) The minimum period referred to in subsection (1) above is—

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

and a previous disqualification imposed on an offender is to be taken into account if it [<sup>F84</sup>was for a fixed period of 56 days or more and was imposed] within the three years immediately preceding the commission of the latest offence in respect of which penalty points are taken into account under section 29 of this Act.

- (3) Where an offender is convicted on the same occasion of more than one offence [<sup>F85</sup>to which subsection (1) above applies]—
  - (a) not more than one disqualification shall be imposed on him under subsection (1) above,
  - (b) in determining the period of the disqualification the court must take into account all the offences, and
  - (c) for the purposes of any appeal any disqualification imposed under subsection (1) above shall be treated as an order made on the conviction of each of the offences.
- (4) No account is to be taken under subsection (1) above of any of the following circumstances—
  - (a) any circumstances that are alleged to make the offence or any of the offences not a serious one,
  - (b) hardship, other than exceptional hardship, or
  - (c) any circumstances which, within the three years immediately preceding the conviction, have been taken into account under that subsection in ordering the offender to be disqualified for a shorter period or not ordering him to be disqualified.
- (5) References in this section to disqualification do not include a disqualification imposed under section 26 of this Act or section 44 of the <sup>M25</sup>Powers of Criminal Courts Act 1973 [<sup>F86</sup>or section 223A or 436A of the Criminal Procedure (Scotland) Act 1975 (offences committed by using vehicles) or a disqualification imposed in respect of an offence of stealing a motor vehicle, an offence under section 12 or 25 of the Theft Act 1968, an offence under section 178 of the Road Traffic Act 1988, or an attempt to commit such an offence].
- [<sup>F87</sup>(5A) The preceding provisions of this section shall apply in relation to a conviction of an offence committed by aiding, abetting, counselling, procuring, or inciting to the commission of, an offence involving obligatory disqualification as if the offence were an offence involving discretionary disqualification.]
- (6) In relation to Scotland, references in this section to the court include the district court.
- (7) This section is subject to section 48 of this Act.

#### Textual Amendments

**F82** Words in s. 35(1)(a) substituted (1.7.1992) by [Road Traffic Act 1991 \(c. 40, SIF 107:1\)](#), s. 48, [Sch. 4 para. 95\(2\)](#); S.I. 1992/1286, [art. 2](#), Sch. (with art. 6(5))

**F83** [S. 35\(1A\)](#) inserted (1.7.1992) by [Road Traffic Act 1991 \(c. 40, SIF 107:1\)](#), s. 48, [Sch. 4 para. 95\(3\)](#); S.I. 1992/1286, [art. 2](#), Sch. (with art. 6(5))

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- F84** Words in s. 35(2) substituted (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), s. 48, **Sch. 4 para. 95(4)**; S.I. 1992/1286, **art. 2**, Sch. (with art. 6(5))
- F85** Words in s. 35(3) substituted (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), s. 48, **Sch. 4 para. 95(5)**; S.I. 1992/1286, **art. 2**, Sch. (with art. 6(5))
- F86** Words in s. 35(5) substituted (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), s. 48, **Sch. 4 para. 95(6)**; S.I. 1992/1286, **art. 2**, Sch. (with art. 6(5))
- F87** S. 35(5A) inserted (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), s. 48, **Sch. 4 para. 95(7)**; S.I. 1992/1286, **art. 2**, Sch. (with art. 6(5))

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

- C36** S. 35: power to exclude or modify conferred (1.7.1992) by Road Traffic Act 1988 (c. 52, SIF 107:1), **s. 193A(2)(b)** (inserted (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), **s. 46(2)**); S.I. 1992/1286, **art. 2**, Sch. (with art. 6(5)).

#### Marginal Citations

- M25** 1973 c. 62.

### [<sup>F88</sup> 36 Disqualification until test is passed. **E+W+S**

- (1) Where this subsection applies to a person the court must order him to be disqualified until he passes the appropriate driving test.
- (2) Subsection (1) above applies to a person who is disqualified under section 34 of this Act on conviction of—
  - (a) manslaughter, or in Scotland culpable homicide, by the driver of a motor vehicle, or
  - (b) an offence under section 1 (causing death by dangerous driving) or section 2 (dangerous driving) of the Road Traffic Act 1988.
- (3) Subsection (1) above also applies—
  - (a) to a person who is disqualified under section 34 or 35 of this Act in such circumstances or for such period as the Secretary of State may by order prescribe, or
  - (b) to such other persons convicted of such offences involving obligatory endorsement as may be so prescribed.
- (4) Where a person to whom subsection (1) above does not apply is convicted of an offence involving obligatory endorsement, the court may order him to be disqualified until he passes the appropriate driving test (whether or not he has previously passed any test).
- (5) In this section—
 

“appropriate driving test” means—

  - (a) an extended driving test, where a person is convicted of an offence involving obligatory disqualification or is disqualified under section 35 of this Act,
  - (b) a test of competence to drive, other than an extended driving test, in any other case,

“extended driving test” means a test of competence to drive prescribed for the purposes of this section, and

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

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- (6) In determining whether to make an order under subsection (4) above, the court shall have regard to the safety of road users.
- (7) Where a person is disqualified until he passes the extended driving test—
- (a) any earlier order under this section shall cease to have effect, and
  - (b) a court shall not make a further order under this section while he is so disqualified.
- (8) Subject to subsection (9) below, a disqualification by virtue of an order under this section shall be deemed to have expired on production to the Secretary of State of evidence, in such form as may be prescribed by regulations under section 105 of the Road Traffic Act 1988, that the person disqualified has passed the test in question since the order was made.
- (9) A disqualification shall be deemed to have expired only in relation to vehicles of such classes as may be prescribed in relation to the test passed by regulations under that section.
- (10) Where there is issued to a person a licence on the counterpart of which are endorsed particulars of a disqualification under this section, there shall also be endorsed the particulars of any test of competence to drive that he has passed since the order of disqualification was made.
- (11) For the purposes of an order under this section, a person shall be treated as having passed a test of competence to drive other than an extended driving test if he passes a corresponding test conducted—
- (a) under the law of Northern Ireland, the Isle of Man, any of the Channel Islands, another [F89EEA State]], Gibraltar or a designated country or territory<sup>F90</sup> . . . , or
  - (b) for the purposes of obtaining a British Forces licence (as defined by section 88(8) of [F91the Road Traffic Act 1988]);
- and accordingly subsections (8) to (10) above shall apply in relation to such a test as they apply in relation to a test prescribed by virtue of section 89(3) of that Act.
- [F92(11A) In subsection (11) above “designated country or territory” means a country or territory designated under section 108(2) of the Road Traffic Act 1988.]
- (12) This section is subject to section 48 of this Act.
- (13) The power to make an order under subsection (3) above shall be exercisable by statutory instrument; and no such order shall be made unless a draft of it has been laid before and approved by resolution of each House of Parliament.
- (14) The Secretary of State shall not make an order under subsection (3) above after the end of 2001 if he has not previously made such an order.

#### Textual Amendments

- F88** S. 36 substituted (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), s. 32; S.I. 1992/1286, art. 2, Sch. (with art. 6(5))
- F89** Words in s. 36 substituted (1.1.1997) by S.I. 1996/1974, reg. 3, Sch. 2 para. 3(2)(a)
- F90** Words in s. 36(11)(a) repealed by virtue of S.I. 1996/1974, reg. 3, Sch. 2, para. 3(2)(b)
- F91** Words in s. 36(11)(b) substituted (1.1.1997) by S.I. 1996/1974, reg. 3, Sch. 2 para. 3(3)
- F92** S. 36(11A) inserted (1.1.1997) by S.I. 1996/1974, reg. 3, Sch. 2 para. 3(3)

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

- C37** S. 36: power to exclude or modify conferred (1.7.1992) by Road Traffic Act 1988 (c. 52, SIF 107:1), s. 193A(2)(b) (inserted (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), s. 46(2); S.I. 1992/1286, art. 2, Sch. (with art. 6(5))).

### 37 Effect of order of disqualification. **E+W+S**

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

[<sup>F93</sup>(1A) Where—

- (a) the disqualification is for a fixed period shorter than 56 days in respect of an offence involving obligatory endorsement, or  
(b) the order is made under section 26 of this Act,

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

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

- (3) Notwithstanding anything in Part III of the Road Traffic Act 1988, a person disqualified by an order of a court under section [<sup>F94</sup>36] of this Act is (unless he is also disqualified otherwise than by virtue of such an order) entitled to obtain and to hold a provisional licence and to drive a motor vehicle in accordance with the conditions subject to which the provisional licence is granted.

#### Textual Amendments

- F93** S. 37(1A) inserted (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), s. 33; S.I. 1992/1286, art. 2, Sch. (with art. 6(5))  
**F94** Word in s. 37(3) substituted (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), s. 48, Sch. 4 para. 96; S.I. 1992/1286, art. 2, Sch. (with art. 6(5))

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

- C38** S. 37: power to exclude or modify conferred (1.7.1992) by Road Traffic Act 1988 (c. 52, SIF 107:1), s. 193A(2)(b) (inserted (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), s. 46(2); S.I. 1992/1286, art. 2, Sch. (with art. 6(5))).  
**C39** Ss. 36(4), 37(3) extended by Road Traffic (Consequential Provisions) Act 1988 (c. 54, SIF 107:1), s. 5, Sch. 4 para. 7(5)

### 38 Appeal against disqualification. **E+W+S**

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

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

**C40** S. 38: power to exclude or modify conferred (1.7.1992) by [Road Traffic Act 1988 \(c. 52, SIF 107:1\)](#), [s. 193A\(2\)\(b\)](#) (inserted (1.7.1992) by [Road Traffic Act 1991 \(c. 40, SIF 107:1\)](#), [s. 46\(2\)](#); S.I. 1992/1286, [art. 2](#), Sch.).

### 39 Suspension of disqualification pending appeal. **E+W+S**

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

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

**C41** S. 39: power to exclude or modify conferred (1.7.1992) by [Road Traffic Act 1988 \(c. 52, SIF 107:1\)](#), [s. 193A\(2\)\(b\)](#) (inserted (1.7.1992) by [Road Traffic Act 1991 \(c. 40, SIF 107:1\)](#), [s. 46\(2\)](#); S.I. 1992/1286, [art. 2](#), Sch.).

### 40 Power of appellate courts in England and Wales to suspend disqualification. **E+W+S**

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



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- (a) under section 1 of the <sup>M26</sup>Administration of Justice Act 1960 from any decision of a Divisional Court of the Queen’s Bench Division which is material to his conviction or sentence, or
  - (b) under section 33 of the <sup>M27</sup>Criminal Appeal Act 1968 from any decision of the Court of Appeal which is material to his conviction or sentence,
- the Divisional Court or, as the case may require, the Court of Appeal may, if it thinks fit, suspend the disqualification.
- (4) Where a person ordered to be disqualified makes an application in respect of the decision of the court in question under section 111 of the <sup>M28</sup>Magistrates’ Courts Act 1980 (statement of case by magistrates’ court) or section 28 of the <sup>M29</sup>Supreme Court Act 1981 (statement of case by Crown Court) the High Court may, if it thinks fit, suspend the disqualification.
  - (5) Where a person ordered to be disqualified—
    - (a) applies to the High Court for an order of certiorari to remove into the High Court any proceedings of a magistrates’ court or of the Crown Court, being proceedings in or in consequence of which he was convicted or his sentence was passed, or
    - (b) applies to the High Court for leave to make such an application,the High Court may, if it thinks fit, suspend the disqualification.
  - (6) Any power of a court under the preceding provisions of this section to suspend the disqualification of any person is a power to do so on such terms as the court thinks fit.
  - (7) Where, by virtue of this section, a court suspends the disqualification of any person, it must send notice of the suspension to the Secretary of State.
  - (8) The notice must be sent in such manner and to such address and must contain such particulars as the Secretary of State may determine.

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

**C42** S. 40: power to exclude or modify conferred (1.7.1992) by [Road Traffic Act 1988 \(c. 52, SIF 107:1\)](#), [s. 193A\(2\)\(b\)](#) (inserted (1.7.1992) by [Road Traffic Act 1991 \(c. 40, SIF 107:1\)](#), [s. 46\(2\)](#); [S.I. 1992/1286, art. 2, Sch.](#)).

**Marginal Citations**

**M26** 1960 c. 65.  
**M27** 1968 c. 19.  
**M28** 1980 c. 43.  
**M29** 1981 c. 54.

**41 Power of High Court of Justiciary to suspend disqualification. E+W+S**

- (1) This section applies where a person has been convicted by or before a court in Scotland of an offence involving obligatory or discretionary disqualification and has been ordered to be disqualified; and in the following provisions of this section—
  - (a) any reference to a person ordered to be disqualified is to be construed as a reference to a person so convicted and so ordered to be disqualified, and
  - (b) any reference to his sentence includes a reference to the order of disqualification and to any other order made on his conviction and,

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accordingly, any reference to an appeal against his sentence includes a reference to an appeal against any order forming part of his sentence.

- (2) Where a person ordered to be disqualified appeals to the High Court of Justiciary, whether on appeal against a summary conviction or a conviction on indictment or his sentence, the court may, if it thinks fit, suspend the disqualification on such terms as it thinks fit.

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

- (3) Where, by virtue of this section, the High Court suspends the disqualification of any person, it must send notice of the suspension to the Secretary of State.
- (4) The notice must be sent in such manner and to such address and must contain such particulars as the Secretary of State may determine.

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

**C43** S. 41: power to exclude or modify conferred (1.7.1992) by [Road Traffic Act 1988 \(c. 52, SIF 107:1\)](#), [s. 193A\(2\)\(b\)](#) (inserted (1.7.1992) by [Road Traffic Act 1991 \(c. 40, SIF 107:1\)](#), [s. 46\(2\)](#); S.I. 1992/1286, [art. 2](#), Sch.).

#### [<sup>F95</sup>41A Suspension of disqualification pending determination of applications under section 34B. **E+W+S**

- (1) Where a person makes an application to a court under section 34B of this Act, the court may suspend the disqualification to which the application relates pending the determination of the application.
- (2) Where a court exercises its power under subsection (1) above it must send notice of the suspension to the Secretary of State.
- (3) The notice must be sent in such manner and to such address, and must contain such particulars, as the Secretary of State may determine.]

#### Textual Amendments

**F95** S. 41A inserted (1.7.1992) by [Road Traffic Act 1991 \(c. 40, SIF 107:1\)](#), s. 48, [Sch. 4 para.97](#); S.I. 1992/1286, [art. 2](#), [Sch.](#)

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

**C44** Ss. 34 - 48: power to exclude or modify conferred (1.7.1992) by [Road Traffic Act 1988 \(c. 52, SIF 107:1\)](#), [s. 193A\(2\)\(b\)](#) (inserted (1.7.1992) by [Road Traffic Act 1991 \(c. 40, SIF 107:1\)](#), [s. 46\(2\)](#); S.I. 1992/1286, [art. 2](#), Sch.)

#### 42 Removal of disqualification. **E+W+S**

- (1) Subject to the provisions of this section, a person who by an order of a court is disqualified may apply to the court by which the order was made to remove the disqualification.
- (2) On any such application the court may, as it thinks proper having regard to—

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- (a) the character of the person disqualified and his conduct subsequent to the order,
- (b) the nature of the offence, and
- (c) any other circumstances of the case,
- either by order remove the disqualification as from such date as may be specified in the order or refuse the application.
- (3) No application shall be made under subsection (1) above for the removal of a disqualification before the expiration of whichever is relevant of the following periods from the date of the order by which the disqualification was imposed, that is—
- (a) two years, if the disqualification is for less than four years,
- (b) one half of the period of disqualification, if it is for less than ten years but not less than four years,
- (c) five years in any other case;
- and in determining the expiration of the period after which under this subsection a person may apply for the removal of a disqualification, any time after the conviction during which the disqualification was suspended or he was not disqualified shall be disregarded.
- (4) Where an application under subsection (1) above is refused, a further application under that subsection shall not be entertained if made within three months after the date of the refusal.
- (5) If under this section a court orders a disqualification to be removed, the court—
- (a) must cause particulars of the order to be endorsed on [<sup>F96</sup>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.
- [<sup>F97</sup>(5A) Subsection (5)(a) above shall apply only where the disqualification was imposed in respect of an offence involving obligatory endorsement; and in any other case the court must send notice of the order made under this section to the Secretary of State.
- (5B) A notice under subsection (5A) above must be sent in such manner and to such address, and must contain such particulars, as the Secretary of State may determine.]
- (6) The preceding provisions of this section shall not apply where the disqualification was imposed by order under section 36(1) of this Act.

#### Textual Amendments

**F96** Words inserted by S.I. 1990/144, regs. 2(2), 3, **Sch. 2 para. 9**

**F97** S. 42(5A)(5B) inserted (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), s. 48, **Sch. 4 para.98**; S.I. 1992/1286, **art. 2**,Sch.

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

**C45** S. 42 modified by Road Traffic (Consequential Provisions) Act 1988 (c. 54, SIF 107:1), s. 5, **Sch. 4 para. 7(6)**

**C46** S. 42: power to exclude or modify conferred (1.7.1992) by Road Traffic Act 1988 (c. 52, SIF 107:1), **s. 193A(2)(b)** (inserted (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), **s. 46(2)**; S.I. 1992/1286, **art. 2**,Sch.)

**C47** S. 42(5) excluded by Powers of Criminal Courts Act 1973 (c. 62, SIF 39:1), **s. 44(3)(b)** (as amended by Road Traffic (Consequential Provisions) Act 1988 (c. 54, SIF 107:1), s. 4, **Sch. 3 para. 11(c)**)

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- C48** S. 42(5) applied with modifications by S.I. 1987/1378, **reg. 25(3)** (as amended by S.I. 1990/842, **reg. 9**)  
S. 42(5) applied (with modifications) (12.11.1999) by S.I. 1999/2864, **reg. 80(5)(c)**
- C49** S. 42(6) extended by Road Traffic (Consequential Provisions) Act 1988 (c. 54, SIF 107:1), s. 5, **Sch. 4 para. 7(5)**

#### 43 Rule for determining end of period of disqualification. **E+W+S**

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

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

- C50** S. 43: power to exclude or modify conferred (1.7.1992) by Road Traffic Act 1988 (c. 52, SIF 107:1), **s. 193A(2)(b)** (inserted (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), **s. 46(2)**; S.I. 1992/1286, **art. 2, Sch.**).

#### Endorsement

#### 44 Endorsement of licences. **E+W+S**

- (1) Where a person is convicted of an offence involving obligatory endorsement, the court must order there to be endorsed on [<sup>F98</sup>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 subsection (1) above if for special reasons it thinks fit not to do so.
- (3) In relation to Scotland, references in this section to the court include the district court.
- (4) This section is subject to section 48 of this Act.

##### Textual Amendments

- F98** Words inserted by S.I. 1990/144, **regs. 2(2), 3, Sch. 2 para. 10**

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

- C51** S. 44: power to exclude or modify conferred (1.7.1992) by Road Traffic Act 1988 (c. 52, SIF 107:1), **s. 193A(2)(b)** (inserted (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), **s. 46(2)**; S.I. 1992/1286, **art. 2, Sch.**).

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## 45 Effect of endorsement. **E+W+S**

- (1) An order that any particulars or penalty points are to be endorsed on [F99 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 [F99 the counterpart of] any licence he may then hold or may subsequently obtain is to be so endorsed until he becomes entitled under subsection (4) below to have a licence issued to him [F99 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 [F100 the counterpart of] any licence held by him shall be entered on [F100 the counterpart of] the licence unless he has become entitled under subsection (4) below to have a licence issued to him [F100 with its counterpart] free from those particulars or penalty points.
- (3) ..... F101
- (4) [F102 A person the counterpart of whose licence has been ordered to be endorsed is entitled to have issued to him with effect from the end of the period for which the endorsement remains effective a new licence with a counterpart free from the endorsement if], he applies for a new licence in pursuance of section 97(1) of the M30 Road Traffic Act 1988, surrenders any subsisting licence [F103 and its counterpart], pays the fee prescribed by regulations under Part III of that Act and satisfies the other requirements of section 97(1).
- (5) An endorsement ordered on a person's conviction of an offence remains effective (subject to subsections (6) and (7) below)—
  - (a) if an order is made for the disqualification of the offender, until four years have elapsed since the conviction, and
  - (b) if no such order is made, until either—
    - (i) four years have elapsed since the commission of the offence, or
    - [F104 (ii) an order is made for the disqualification of the offender under section 35 of this Act]
- (6) Where the offence was one under section 1 or 2 of that Act (causing death by [F105 dangerous] driving and [F105 dangerous] driving), the endorsement remains in any case effective until four years have elapsed since the conviction.
- (7) Where the offence was one—
  - [F106 (a) section 3A, 4(1) or 5(1)(a) of that Act (driving offences connected with drink or drugs), or]
  - (b) under section 7(6) of that Act (failing to provide specimen) involving obligatory disqualification,the endorsement remains effective until eleven years have elapsed since the conviction.

### Textual Amendments

**F99** Words inserted by S.I. 1990/144, regs. 2(2), 3, Sch. 2 para. 11(a)(i)(ii)(iii)

**F100** Words inserted by S.I. 1990/144, regs. 2(2), 3, Sch. 2 para. 11(b)(i)(ii)(iii)

**F101** S. 45(3) repealed by Road Traffic (Driver Licensing and Information Systems) Act 1989 (c. 22, SIF 107:1), ss. 7, 16, Sch. 3 para. 25(a), Sch. 6

**F102** Words substituted by S.I. 1990/144, regs. 2(2), 3, Sch. 2 para. 11(d)(i)

**F103** Words inserted by S.I. 1990/144, regs. 2(2), 3, Sch. 2 para. 11(d)(ii)

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**F104** S. 45(5)(b)(ii) substituted (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), s. 48, **Sch. 4 para. 99(2)**; S.I. 1992/1286, **art. 2**, Sch.

**F105** Word in s. 45(6) substituted (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), s. 48, **Sch. 4 para. 99(3)**; S.I. 1992/1286, **art. 2**, Sch.

**F106** S. 45(7)(a) substituted (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), s. 48, **Sch. 4 para. 99(4)**; S.I. 1992/1286, **art. 2**, Sch.

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

**C52** S. 45: power to exclude or modify conferred (1.7.1992) by Road Traffic Act 1988 (c. 52, SIF 107:1), **s. 193A(2)(b)** (inserted (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), **s. 46(2)**; S.I. 1992/1286, **art. 2**, Sch.)

**C53** S. 45(5) modified (1.7.1992) by S.I. 1992/1286, **art. 6(4)**

#### Marginal Citations

**M30** 1988 c. 52.

### General

#### 46 Combination of disqualification and endorsement with probation orders and orders for discharge. **E+W**

(1) Notwithstanding anything in [<sup>F107</sup>section 1C(3)] of the <sup>M31</sup>Powers of Criminal Courts Act 1973 (conviction of offender <sup>F108</sup> . . . discharged to be disregarded for the purposes of enactments relating to disqualification), a court in England and Wales which on convicting a person of an offence involving obligatory or discretionary disqualification makes—

- (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 sections 34, 35, 36 or 44 of this Act.

(2) A conviction—

- (a) in respect of which a court in England and Wales has ordered a person to be disqualified, or
- (b) of which particulars have been endorsed on [<sup>F109</sup>the counterpart of] any licence held by him,

is to be taken into account, notwithstanding anything in [<sup>F110</sup>section 1C(1)] of the Powers of Criminal Courts Act 1973 (conviction of offender <sup>F111</sup> . . . 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.

(3) Where—

- (a) a person is charged in Scotland with an offence involving obligatory or discretionary disqualification, and
- (b) the court makes an order in respect of the offence under [<sup>F112</sup>section 228 (probation) or 246(2) or (3) (absolute discharge) of the Criminal Procedure (Scotland) Act 1995]

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then, for the purposes of sections 34, 35, 36, 44 and 45 of this Act, he shall be treated as if he had been convicted of an offence of the kind in question and [<sup>F113</sup>section 247 of that Act shall not apply].

#### Extent Information

- E1** This version of this provision extends to England and Wales only; a separate version has been created for Scotland only.

#### Textual Amendments

- F107** Words in s. 46(1) substituted (E.W.) (1.10.1992) by Criminal Justice Act 1991 (c. 53, SIF 39:1), s. 100, **Sch. 11 para. 38(1)**; S.I. 1992/333, art. 2(2), **Sch. 2**
- F108** Words in s. 46(1) repealed (E.W.) (1.10.1992) by Criminal Justice Act 1991 (c. 53, 39:1), ss. 100, 101(2), Sch. 11 para. 38(1), **Sch. 13**; S.I. 1992/333, art. 2(2), **Sch. 2**
- F109** Words inserted by S.I. 1990/144, regs. 2(2), 3, **Sch. 2 para. 12**
- F110** Words in s. 46(2) substituted (E.W.) (1.10.1992) by Criminal Justice Act 1991 (c. 53, SIF 39:1), s. 100, **Sch. 11 para. 38(2)**; S.I. 1992/333, art. 2(2), **Sch. 2**
- F111** Words in s. 46(2) repealed (E.W.) (1.10.1992) by Criminal Justice Act 1991 (c. 53, SIF 39:1), ss. 100, 101(2), Sch. 11 para. 38(2), **Sch. 13**; S.I. 1992/333, art. 2(2), **Sch. 2**
- F112** Words in s. 46(3)(b) substituted (1.4.1996) by 1995 c. 40, s. 5, **Sch. 4 para. 71(7)(a)**
- F113** Words in s. 46 substituted (1.4.1996) by 1995 c. 40, s. 5, **Sch. 4 para. 71(7)(b)**

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

- C54** S. 46: power to exclude or modify conferred (1.7.1992) by Road Traffic Act 1988 (c. 52, SIF 107:1), s. 193A(2)(b)(inserted (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), s. 46(2); S.I. 1992/1286, art. 2, Sch.).

#### Marginal Citations

- M31** 1973 c. 62.

## 46 Combination of disqualification and endorsement with probation orders and orders for discharge. **S**

- (1) Notwithstanding anything in section 13(3) of the <sup>M53</sup>Powers of Criminal Courts Act 1973 (conviction of offender placed on probation or discharged to be disregarded for the purposes of enactments relating to disqualification), a court in England and Wales which on convicting a person of an offence involving obligatory or discretionary disqualification makes—

- (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 sections 34, 35, 36 or 44 of this Act.

- (2) A conviction—

- (a) in respect of which a court in England and Wales has ordered a person to be disqualified, or
- (b) of which particulars have been endorsed on [<sup>F180</sup>the counterpart of] any licence held by him,

is to be taken into account, notwithstanding anything in section 13(1) of the Powers of Criminal Courts Act 1973 (conviction of offender placed on probation or discharged to be disregarded for the purpose of subsequent proceedings), in determining his liability

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to punishment or disqualification for any offence involving obligatory or discretionary disqualification committed subsequently.

(3) Where—

- (a) a person is charged in Scotland with an offence involving obligatory or discretionary disqualification, and
- (b) the court makes an order in respect of the offence under [F181section 228 (probation) or 246(2) or (3) (absolute discharge) of the Criminal Procedure (Scotland) Act 1995]

then, for the purposes of sections 34, 35, 36, 44 and 45 of this Act, he shall be treated as if he had been convicted of an offence of the kind in question and [F182section 247 of that Act shall not apply].

#### Extent Information

**E2** This version of this provision extends to Scotland only; a separate version has been created for England and Wales only.

#### Textual Amendments

**F180** Words inserted by S.I. 1990/144, regs. 2(2), 3, Sch. 2 para. 12

**F181** Words in s. 46(3)(b) substituted (1.4.1996) by 1995 c. 40, s. 5, Sch. 4 para. 71(7)(a)

**F182** Words in s. 46(7) substituted (1.4.1996) by 1995 c. 40, s. 5, Sch. 4 para. 71(7)

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

**C69** S. 46: power to exclude or modify conferred (1.7.1992) by Road Traffic Act 1988 (c. 52, SIF 107:1), s. 193A(2)(b) (inserted (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), s. 46(2); S.I. 1992/1286, art. 2, Sch.).

#### Marginal Citations

**M53** 1973 c. 62.

## 47 Supplementary provisions as to disqualifications and endorsements. **E+W+S**

- (1) In any case where a court exercises its power under section 34, 35 or 44 of this Act not to order any disqualification or endorsement or to order disqualification for a shorter period than would otherwise be required, it must state the grounds for doing so in open court and, if it is a magistrates' court or, in Scotland, a court of summary jurisdiction, must cause them to be entered in the register (in Scotland, record) of its proceedings.
- (2) Where a court orders the endorsement of [F114the counterpart of] any licence held by a person it may [F115, 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 [F116licence and its counterpart, on their] being produced to the court, to the Secretary of State; and if the court orders the endorsement but does not send the licence [F114and its counterpart] to the Secretary of State it must send him notice of the endorsement.

[F117(2A) Subsection (2) above is subject to section 2(2) of and paragraph 7(2) of Schedule 1 to the Road Traffic (New Drivers) Act 1995 (obligation of court to send licence and its counterpart to the Secretary of State).]



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- (3) Where on an appeal against [<sup>F118</sup>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 Secretary of State.
- (4) A notice sent by a court to the Secretary of State in pursuance of this section must be sent in such manner and to such address and contain such particulars as the Secretary of State may determine, and a licence [<sup>F119</sup>and the counterpart of a licence] so sent in pursuance of this section must be sent to such address as the Secretary of State may determine.

#### Textual Amendments

- F114** Words inserted by S.I. 1990/144, regs. 2(2), 3, **Sch. 2 para. 13(a)(i)(ii)(iii)**
- F115** Words in s. 47(2) substituted (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), s. 48, **Sch. 4 para. 100(2)**; S.I. 1992/1286, art. 2, **Sch.**
- F116** Words substituted by S.I. 1990/144, regs. 2(2), 3, **Sch. 2 para. 13(a)(i)(ii)(iii)**
- F117** S. 47(2A) inserted (1.6.1997) by 1995 c. 13, s. 10(4), **Sch. 2 para. 4** (with ss. 8, 10(3)); S.I. 1997/267, **art. 2(2)**
- F118** Words in s. 47(3) substituted (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), s. 48, **Sch. 4 para. 100(3)**; S.I. 1992/1286, art. 2, **Sch.**
- F119** Words inserted by S.I. 1990/144, regs. 2(2), 3, **Sch. 2 para. 13(b)**

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

- C55** S. 47: power to exclude or modify conferred (1.7.1992) by Road Traffic Act 1988 (c. 52, SIF 107:1), **s. 193A(2)(b)** (inserted (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), **s. 46(2)**; S.I. 1992/1286, art. 2, **Sch.**).
- S. 47 applied (with modifications) (12.11.1999) by S.I. 1999/2864, **reg. 80(5)(d)**
- C56** S. 47(2) applied with modifications by S.I. 1987/1378, **reg. 25(3)** (as amended by S.I. 1990/842, **reg. 9**)
- C57** S. 47(4) applied by Criminal Justice Act 1972 (c. 71, SIF 39:1), **s. 24(3)(b)** (as amended by Road Traffic (Consequential Provisions) Act 1988 (c. 54, SIF 107:1), s. 4, **Sch. 3 para. 10(b)** )
- C58** S. 47(4) applied by Powers of Criminal Courts Act 1973 (c. 62, SIF 39:1), **s. 44(3)(b)** (as amended by Road Traffic (Consequential Provisions) Act 1988 (c. 54, SIF 107:1), s. 4, **Sch. 3 para. 11(c)** )

#### [<sup>F120</sup>48 Exemption from disqualification and endorsement for certain construction and use offences. **E+W+S**

- (1) Where a person is convicted of an offence under section 40A of the Road Traffic Act 1988 (using vehicle in dangerous condition etc) the court must not—
  - (a) order him to be disqualified, or
  - (b) order any particulars or penalty points to be endorsed on the counterpart of any licence held by him,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 section 41A of the Road Traffic Act 1988 (breach of requirement as to brakes, steering-gear or tyres) the court must not—
  - (a) order him to be disqualified, or
  - (b) order any particulars or penalty points to be endorsed on the counterpart of any licence held by him,

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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.

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

#### Textual Amendments

**F120** S. 48 substituted (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), s. 48, **Sch. 4 para.101**; S.I. 1992/1286, **art. 2**,Sch.

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

**C59** S. 48: power to exclude or modify conferred (1.7.1992) by Road Traffic Act 1988 (c. 52, SIF 107:1), **s. 193A(2)(b)** (inserted (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), **s. 46(2)**; S.I. 1992/1286, **art. 2**,Sch.).

#### 49 Offender escaping consequences of endorseable offence by deception. **E+W+S**

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

- (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.

#### 50 Powers of district court in Scotland. **E+W+S**

Nothing in section 10 of this Act empowers a district court in Scotland in respect of any offence—

- (a) to impose—  
 (i) a penalty of imprisonment which exceeds sixty days, or  
 (ii) a fine which exceeds level 4 on the standard scale, or  
 (b) to impose disqualification.

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## PART III **E+W+S**

### FIXED PENALTIES

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

- C60** Pt. III (ss. 51–90) amended by (E.W.) S.I. 1990/335, **art. 2(1)** and (S.) S.I. 1990/466, **art. 2(1)**  
Pt. III (ss. 51–90) amended (1.8.1999) by S.I. 1999/1851, **art. 2(1)**
- C61** Definition in Pt. III (ss. 51–90) applied (E.W.) (1.10.1992) by Criminal Justice Act 1991 (c. 53, SIF 39:1), **ss. 18(7)(b)**, 101(1) (with Sch. 12 para. 6); S.I. 1992/333, art. 2(2), **Sch.2**

#### Introductory

#### 51 Fixed penalty offences. **E+W+S**

- (1) Any offence in respect of a vehicle under an enactment specified in column 1 of Schedule 3 to this Act is a fixed penalty offence for the purposes of this Part of this Act, but subject to subsection (2) below and to any limitation or exception shown against the enactment in column 2 (where the general nature of the offence is also indicated).
- (2) An offence under an enactment so specified is not a fixed penalty offence for those purposes if it is committed by causing or permitting a vehicle to be used by another person in contravention of any provision made or restriction or prohibition imposed by or under any enactment.
- (3) The Secretary of State may by order provide for offences to become or (as the case may be) to cease to be fixed penalty offences for the purposes of this Part of this Act, and may make such modifications of the provisions of this Part of this Act as appear to him to be necessary for the purpose.

#### 52 Fixed penalty notices. **E+W+S**

- (1) In this Part of this Act “fixed penalty notice” means a notice offering the opportunity of the discharge of any liability to conviction of the offence to which the notice relates by payment of a fixed penalty in accordance with this Part of this Act.
- (2) A fixed penalty notice must give such particulars of the circumstances alleged to constitute the offence to which it relates as are necessary for giving reasonable information about the alleged offence.
- (3) A fixed penalty notice must state—
  - (a) the period during which, by virtue of section 78(1) of this Act, proceedings cannot be brought against any person for the offence to which the notice relates, being the period of twenty-one days following the date of the notice or such longer period (if any) as may be specified in the notice (referred to in this Part of this Act as the “suspended enforcement period”),
  - (b) the amount of the fixed penalty, and
  - (c) the justices’ clerk or, in Scotland, the clerk of court to whom and the address at which the fixed penalty may be paid.
- (4) A fixed penalty notice given under section 54(2) of this Act in respect of an offence committed in Scotland must be in the prescribed form.

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**[<sup>F121</sup>53 Amount of fixed penalty. E+W+S**

- (1) The fixed penalty for an offence is—
  - (a) such amount as the Secretary of State may by order prescribe, or
  - (b) one half of the maximum amount of the fine to which a person committing that offence would be liable on summary conviction,
 whichever is the less.
- (2) Any order made under subsection (1)(a) may make different provision for different cases or classes of case or in respect of different areas.]

**Textual Amendments**

**F121** S. 53 substituted (1.4.1992) by [Road Traffic Act 1991 \(c. 40, SIF 107:1\)](#), s. 48, [Sch. 4 para.102](#); [S.I. 1992/199, arts. 3\(2\)\(b\), 4](#); but see [S.I.1992/435](#) for an expressed substitution (S.) (1.4.1992) of penalties in the previous form of s. 53

*Giving notices to suspected offenders*

**54 Notices on-the-spot or at a police station. E+W+S**

- (1) This section applies where [<sup>F122</sup>in England and Wales] on any occasion a constable in uniform has reason to believe that a person he finds is committing or has on that occasion committed a fixed penalty offence.
- (2) Subject to subsection (3) below, the constable may give him a fixed penalty notice in respect of the offence.
- (3) Where the offence appears to the constable to involve obligatory endorsement, the constable may only give him a fixed penalty notice under subsection (2) above in respect of the offence if—
  - (a) he produces his licence [<sup>F123</sup>and its counterpart] for inspection by the constable,
  - (b) the constable is satisfied, on inspecting the licence [<sup>F123</sup>and its counterpart], that he would not be liable to be disqualified under section 35 of this Act if he were convicted of that offence, and
  - (c) he surrenders his licence [<sup>F123</sup>and its counterpart] to the constable to be retained and dealt with in accordance with this Part of this Act.
- (4) Where—
  - (a) the offence appears to the constable to involve obligatory endorsement, and
  - (b) the person concerned does not produce his licence [<sup>F124</sup>and its counterpart] for inspection by the constable,
 the constable may give him a notice stating that if, within seven days after the notice is given, he produces the notice together with his licence [<sup>F125</sup>and its counterpart] in person to a constable or authorised person at the police station specified in the notice (being a police station chosen by the person concerned) and the requirements of subsection (5)(a) and (b) below are met he will then be given a fixed penalty notice in respect of the offence.
- (5) If a person to whom a notice has been given under subsection (4) above produces the notice together with his licence [<sup>F126</sup>and its counterpart] in person to a constable or

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authorised person at the police station specified in the notice within seven days after the notice was so given to him and the following requirements are met, that is—

- (a) the constable or authorised person is satisfied, on inspecting the licence [<sup>F127</sup>and its counterpart], that he would not be liable to be disqualified under section 35 of this Act if he were convicted of the offence, and
- (b) he surrenders his licence [<sup>F128</sup>and its counterpart] to the constable or authorised person to be retained and dealt with in accordance with this Part of this Act,

the constable or authorised person must give him a fixed penalty notice in respect of the offence to which the notice under subsection (4) above relates.

(6) A notice under subsection (4) above shall give such particulars of the circumstances alleged to constitute the offence to which it relates as are necessary for giving reasonable information about the alleged offence.

(7) A licence [<sup>F129</sup>and a counterpart of a licence] surrendered in accordance with this section must be sent to the fixed penalty clerk.

<sup>F130</sup>(8) .....

(9) In this Part of this Act “authorised person”, in relation to a fixed penalty notice given at a police station, means a person authorised for the purposes of this section by or on behalf of the chief officer of police for the area in which the police station is situated.

[<sup>F131</sup>(10) In determining for the purposes of subsections (3)(b) and (5)(a) above whether a person convicted of an offence would be liable to disqualification under section 35, it shall be assumed, in the case of an offence in relation to which a range of numbers is shown in the last column of Part I of Schedule 2 to this Act, that the number of penalty points to be attributed to the offence would be the lowest in the range.]

#### Textual Amendments

**F122** Words in s. 54(1) inserted (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), s. 48, **Sch. 4 para. 103(2)**; S.I. 1992/1286, **art. 2**,Sch.

**F123** Words inserted by S.I. 1990/144, regs. 2(2), 3, **Sch. 2 para. 15(a)**

**F124** Words inserted by S.I. 1990/144, regs. 2(2), 3, **Sch. 2 para. 15(b)(i)**

**F125** Words inserted by S.I. 1990/144, regs. 2(2), 3, **Sch. 2 para. 15(b)(ii)**

**F126** Words inserted by S.I. 1990/144, regs. 2(2), 3, **Sch. 2 para. 15(c)(i)**

**F127** Words inserted by S.I. 1990/144, regs. 2(2), 3, **Sch. 2 para. 15(c)(ii)**

**F128** Words inserted by S.I. 1990/144, regs. 2(2), 3, **Sch. 2 para. 15(c)(iii)**

**F129** Words inserted by S.I. 1990/144, regs. 2(2), 3, **Sch. 2 para. 15(d)**

**F130** S. 54(8) repealed (1.7.1992) by Road Traffic Act 1991 (c.40, SIF 107:1), s. 83, **Sch.8**; S.I. 1992/1286, **art. 2**,Sch., Appendix

**F131** S. 54(10) added (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), s. 48, **Sch. 4 para. 103(3)**; S.I. 1992/1286, **art. 2**,Sch.

## 55 Effect of fixed penalty notice given under section 54. **E+W+S**

(1) This section applies where a fixed penalty notice relating to an offence has been given to any person under section 54 of this Act, and references in this section to the recipient are to the person to whom the notice was given.

(2) No proceedings shall be brought against the recipient for the offence to which the fixed penalty notice relates unless before the end of the suspended enforcement period he

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has given notice requesting a hearing in respect of that offence in the manner specified in the fixed penalty notice.

- (3) Where—
- (a) the recipient has not given notice requesting a hearing in respect of the offence to which the fixed penalty notice relates in the manner so specified, and
  - (b) the fixed penalty has not been paid in accordance with this Part of this Act before the end of the suspended enforcement period,
- a sum equal to the fixed penalty plus one–half of the amount of that penalty may be registered under section 71 of this Act for enforcement against the recipient as a fine.

## 56 Licence receipts. **E+W+S**

- (1) A constable or authorised person to whom a person surrenders his licence [<sup>F132</sup>and its counterpart] on receiving a fixed penalty notice given to him under section 54 of this Act must issue a receipt for the licence [<sup>F132</sup>and its counterpart] under this section.
- (2) The fixed penalty clerk may, on the application of a person who has surrendered his licence [<sup>F133</sup>and its counterpart] in those circumstances, issue a new receipt for [<sup>F134</sup>them].
- (3) A receipt issued under this section ceases to have effect—
  - (a) if issued by a constable or authorised person, on the expiration of the period of one month beginning with the date of issue or such longer period as may be prescribed, and
  - (b) if issued by the fixed penalty clerk, on such date as he may specify in the receipt,
 or, if earlier, on the return of the licence [<sup>F135</sup>and its counterpart] to the licence holder.

### Textual Amendments

**F132** Words inserted by S.I. 1990/144, regs. 2(2), 3, Sch. 2 para. 16(a)(i)(ii)

**F133** Words inserted by S.I. 1990/144, regs. 2(2), 3, Sch. 2 para. 16(b)(i)(ii)

**F134** Word substituted by S.I. 1990/144, regs. 2(2), 3, Sch. 2 para. 16(b)(i)(ii)

**F135** Words inserted by S.I. 1990/144, regs. 2(2), 3, Sch. 2 para. 16(c)

## 57 Endorsement of licences without hearings. **E+W+S**

- (1) Subject to subsection (2) below, where a person (referred to in this section as “the licence holder”) has surrendered his licence [<sup>F136</sup>and its counterpart] to a constable or authorised person on the occasion when he was given a fixed penalty notice under section 54 of this Act, [<sup>F136</sup>the counterpart of] his licence may be endorsed in accordance with this section without any order of a court.
- (2) [<sup>F137</sup>The counterpart of] A person’s licence may not be endorsed under this section if at the end of the suspended enforcement period—
  - (a) he has given notice, in the manner specified in the fixed penalty notice, requesting a hearing in respect of the offence to which the fixed penalty notice relates, and
  - (b) the fixed penalty has not been paid in accordance with this Part of this Act.

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- (3) On the payment of the fixed penalty before the end of the suspended enforcement period, the fixed penalty clerk must endorse the relevant particulars on the [<sup>F138</sup>counterpart of the] licence and return it [<sup>F138</sup>together with the licence] to the licence holder.
- (4) Where any sum determined by reference to the fixed penalty is registered under section 71 of this Act for enforcement against the licence holder as a fine, the fixed penalty clerk must endorse the relevant particulars on the [<sup>F138</sup>counterpart of the] licence and return it [<sup>F138</sup>together with the licence] to the licence holder—
  - (a) if he is himself the clerk who registers that sum, on the registration of that sum, and
  - (b) in any other case, on being notified of the registration by the clerk who registers that sum.
- (5) References in this section to the relevant particulars are to—
  - (a) particulars of the offence, including the date when it was committed, and
  - (b) the number of penalty points to be attributed to the offence.
- (6) On endorsing [<sup>F139</sup>the counterpart of] a person's licence under this section the fixed penalty clerk must send notice of the endorsement and of the particulars endorsed to the Secretary of State.

#### Textual Amendments

**F136** Words inserted by S.I. 1990/144, regs. 2(2), 3, Sch. 2 para. 17(a)(i)(ii)

**F137** Words inserted by S.I. 1990/144, regs. 2(2), 3, Sch. 2 para. 17(b)

**F138** Words inserted by S.I. 1990/144, regs. 2(2), 3, Sch. 2 para. 17(c)(i)(ii)

**F139** Words inserted by S.I. 1990/144, regs. 2(2), 3, Sch. 2 para. 17(d)

## 58 Effect of endorsement without hearing. **E+W+S**

- (1) Where [<sup>F140</sup>the counterpart of] a person's licence is endorsed under section 57 of this Act he shall be treated for the purposes of sections 13(4), 28, 29 and 45 of this Act and of the <sup>M32</sup>Rehabilitation of Offenders Act 1974 as if—
  - (a) he had been convicted of the offence,
  - (b) the endorsement had been made in pursuance of an order made on his conviction by a court under section 44 of this Act, and
  - (c) the particulars of the offence endorsed by virtue of section 57(5)(a) of this Act were particulars of his conviction of that offence.
- (2) In relation to any endorsement of [<sup>F141</sup>the counterpart of] a person's licence under section 57 of this Act—
  - (a) the reference in section 45(4) of this Act to the order for endorsement, and
  - (b) the references in section 13(4) of this Act to any order made on a person's conviction,are to be read as references to the endorsement itself.

#### Textual Amendments

**F140** Words inserted by S.I. 1990/144, regs. 2(2), 3, Sch. 2 para. 18(a)

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**F141** Words inserted by S.I. 1990/144, regs. 2(2), 3, **Sch. 2 para. 18(b)**

**Marginal Citations**

**M32** 1974 c. 53.

PROSPECTIVE

**F142**<sup>59</sup> **Notification of court and date of trial in England and Wales.** **E+W**

**Textual Amendments**

**F142** S. 59 repealed (22.7.2004) by Statute Law (Repeals) Act 2004 (c. 14), **Sch. 1 Pt. 14**

**F143**<sup>60</sup> ..... **E+W+S**

**Textual Amendments**

**F143** S. 60 repealed (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), s. 83, **Sch.8**; S.I. 1992/1286, art. 2, **Sch.**Appendix

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

**C62** S. 60 expressed to be amended (1.4.1996) by 1995 c. 40, s. 5, **Sch. 4 para. 71(8)(a)(b)(c)(i)(ii)**

**61** **Fixed penalty notice mistakenly given: exclusion of fixed penalty procedures.** **E+W+S**

- (1) This section applies where, on inspection of a licence [<sup>F144</sup>and its counterpart] sent to him under section 54(7) of this Act, it appears to the fixed penalty clerk that the person whose licence it is would be liable to be disqualified under section 35 of this Act if he were convicted of the offence in respect of which the fixed penalty notice was given.
- (2) The fixed penalty clerk must not endorse the [<sup>F145</sup>counterpart of the] licence under section 57 of this Act but must instead send it [<sup>F145</sup>together with the licence] to the chief officer of police.
- (3) Nothing in this Part of this Act prevents proceedings being brought in respect of the offence in respect of which the fixed penalty notice was given where those proceedings are commenced before the end of the period of six months beginning with the date on which that notice was given.
- (4) Where proceedings in respect of that offence are commenced before the end of that period, the case is from then on to be treated in all respects as if no fixed penalty notice had been given in respect of the offence.
- (5) Accordingly, where proceedings in respect of that offence are so commenced, any action taken in pursuance of any provision of this Part of this Act by reference to that



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fixed penalty notice shall be void (including, but without prejudice to the generality of the preceding provision—

- (a) the registration under section 71 of this Act of any sum, determined by reference to the fixed penalty for that offence, for enforcement against the person whose licence it is as a fine, and
- (b) any proceedings for enforcing payment of any such sum within the meaning of sections 73 and 74 of this Act (defined in section 74(5)).

[<sup>F146</sup>(6) In determining for the purposes of subsection (1) above whether a person convicted of an offence would be liable to disqualification under section 35, it shall be assumed, in the case of an offence in relation to which a range of numbers is shown in the last column of Part I of Schedule 2 to this Act, that the number of penalty points to be attributed to the offence would be the lowest in the range.]

#### Textual Amendments

**F144** Words inserted by S.I. 1990/144, regs. 2(2), 3, Sch. 2 para. 19(a)

**F145** Words inserted by S.I. 1990/144, regs. 2(2), 3, Sch. 2 para. 19(b)(i)(ii)

**F146** S. 61(6) added (1.7.1992) by Road Traffic Act 1991 (c.40, SIF 107:1), s. 48, Sch. 4 para.104; S.I. 1992/1286, art. 2,Sch.

#### Notices fixed to vehicles

#### 62 Fixing notices to vehicles. **E+W+S**

- (1) Where on any occasion a constable has reason to believe in the case of any stationary vehicle that a fixed penalty offence is being or has on that occasion been committed in respect of it, he may fix a fixed penalty notice in respect of the offence to the vehicle unless the offence appears to him to involve obligatory endorsement.
- (2) A person is guilty of an offence if he removes or interferes with any notice fixed to a vehicle under this section, unless he does so by or under the authority of the driver or person in charge of the vehicle or the person liable for the fixed penalty offence in question.

#### 63 Service of notice to owner if penalty not paid. **E+W+S**

- (1) This section applies where a fixed penalty notice relating to an offence has been fixed to a vehicle under section 62 of this Act.
- (2) Subject to subsection (3) below, if at the end of the suspended enforcement period the fixed penalty has not been paid in accordance with this Part of this Act, a notice under this section may be served by or on behalf of the chief officer of police on any person who appears to him (or to any person authorised to act on his behalf for the purposes of this section) to be the owner of the vehicle.

Such a notice is referred to in this Part of this Act as a “notice to owner”.

- (3) Subsection (2) above does not apply where before the end of the suspended enforcement period—
  - (a) any person has given notice requesting a hearing in respect of the offence in the manner specified in the fixed penalty notice, and

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- (b) the notice so given contains a statement by that person to the effect that he was the driver of the vehicle at the time when the offence is alleged to have been committed.

That time is referred to in this Part of this Act as the “time of the alleged offence”.

- (4) A notice to owner—
  - (a) must give particulars of the alleged offence and of the fixed penalty concerned,
  - (b) must state the period allowed for response to the notice, and
  - (c) must indicate that, if the fixed penalty is not paid before the end of that period, the person on whom the notice is served is asked to provide before the end of that period to the chief officer of police by or on whose behalf the notice was served a statutory statement of ownership (as defined in Part I of Schedule 4 to this Act).
- (5) For the purposes of this Part of this Act, the period allowed for response to a notice to owner is the period of twenty-one days from the date on which the notice is served, or such longer period (if any) as may be specified in the notice.
- (6) A notice to owner relating to any offence must indicate that the person on whom it is served may, before the end of the period allowed for response to the notice, either—
  - (a) give notice requesting a hearing in respect of the offence in the manner indicated by the notice, or
  - (b) if—
    - (i) he was not the driver of the vehicle at the time of the alleged offence, and
    - (ii) a person purporting to be the driver wishes to give notice requesting a hearing in respect of the offence,
 provide, together with a statutory statement of ownership provided as requested in that notice, a statutory statement of facts (as defined by Part II of Schedule 4 to this Act) having the effect referred to in paragraph 3(2) of that Schedule (that is, as a notice requesting a hearing in respect of the offence given by the driver).
- (7) In any case where a person on whom a notice to owner relating to any offence has been served provides a statutory statement of facts in pursuance of subsection (6)(b) above—
  - (a) any notice requesting a hearing in respect of the offence that he purports to give on his own account shall be of no effect, and
  - (b) no sum may be registered for enforcement against him as a fine in respect of the offence unless, within the period of two months immediately following the period allowed for response to the notice to owner, no summons or, in Scotland, complaint in respect of the offence in question is served on the person identified in the statement as the driver.

#### 64 Enforcement or proceedings against owner. **E+W+S**

- (1) This section applies where—
  - (a) a fixed penalty notice relating to an offence has been fixed to a vehicle under section 62 of this Act,

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- (b) a notice to owner relating to the offence has been served on any person under section 63(2) of this Act before the end of the period of six months beginning with the day on which the fixed penalty notice was fixed to the vehicle, and
  - (c) the fixed penalty has not been paid in accordance with this Part of this Act before the end of the period allowed for response to the notice to owner.
- (2) Subject to subsection (4) below and to section 63(7)(b) of this Act, a sum equal to the fixed penalty plus one-half of the amount of that penalty may be registered under section 71 of this Act for enforcement against the person on whom the notice to owner was served as a fine.
- (3) Subject to subsection (4) below and to section 65 of this Act, proceedings may be brought in respect of the offence against the person on whom the notice to owner was served.
- (4) If the person on whom the notice to owner was served—
  - (a) was not the owner of the vehicle at the time of the alleged offence, and
  - (b) provides a statutory statement of ownership to that effect in response to the notice before the end of the period allowed for response to the notice,he shall not be liable in respect of the offence by virtue of this section nor shall any sum determined by reference to the fixed penalty for the offence be so registered by virtue of this section for enforcement against him as a fine.
- (5) Subject to subsection (6) below—
  - (a) for the purposes of the institution of proceedings by virtue of subsection (3) above against any person on whom a notice to owner has been served, and
  - (b) in any proceedings brought by virtue of that subsection against any such person,it shall be conclusively presumed (notwithstanding that that person may not be an individual) that he was the driver of the vehicle at the time of the alleged offence and, accordingly, that acts or omissions of the driver of the vehicle at that time were his acts or omissions.
- (6) That presumption does not apply in any proceedings brought against any person by virtue of subsection (3) above if, in those proceedings, it is proved that at the time of the alleged offence the vehicle was in the possession of some other person without the consent of the accused.
- (7) Where—
  - (a) by virtue of subsection (3) above proceedings may be brought in respect of an offence against a person on whom a notice to owner was served, and
  - (b) section 74(1) of this Act does not apply,section 127(1) of the <sup>M33</sup>Magistrates' Courts Act 1980 (information must be laid within six months of time offence committed) and [<sup>F147</sup>section 136(1) of the Criminal Procedure (Scotland) Act 1995] (proceedings must be commenced within six months of that time) shall have effect as if for the reference to six months there were substituted a reference to twelve months.

#### Textual Amendments

**F147** Words in s. 64(7) substituted (1.4.1996) by 1995 c. 40, s. 5, **Sch. 4 para. 71(9)**

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### Marginal Citations

M33 1980 c. 43.

## 65 Restrictions on proceedings against owner and others. **E+W+S**

- (1) In any case where a notice to owner relating to an offence may be served under section 63 of this Act, no proceedings shall be brought in respect of the offence against any person other than a person on whom such a notice has been served unless he is identified as the driver of the vehicle at the time of the alleged offence in a statutory statement of facts provided in pursuance of section 63(6)(b) of this Act by a person on whom such a notice has been served.
- (2) Proceedings in respect of an offence to which a notice to owner relates shall not be brought against the person on whom the notice was served unless, before the end of the period allowed for response to the notice, he has given notice, in the manner indicated by the notice to owner, requesting a hearing in respect of the offence.
- (3) Proceedings in respect of an offence to which a notice to owner relates may not be brought against any person identified as the driver of the vehicle in a statutory statement of facts provided in response to the notice if the fixed penalty is paid in accordance with this Part of this Act before the end of the period allowed for response to the notice.
- (4) Once any sum determined by reference to the fixed penalty for an offence has been registered by virtue of section 64 of this Act under section 71 for enforcement as a fine against a person on whom a notice to owner relating to that offence has been served, no proceedings shall be brought against any other person in respect of that offence.

## 66 Hired vehicles. **E+W+S**

- (1) This section applies where—
  - (a) a notice to owner has been served on a vehicle-hire firm,
  - (b) at the time of the alleged offence the vehicle in respect of which the notice was served was let to another person by the vehicle-hire firm under a hiring agreement to which this section applies, and
  - (c) within the period allowed for response to the notice the firm provides the chief officer of police by or on whose behalf the notice was served with the documents mentioned in subsection (2) below.
- (2) Those documents are a statement on an official form, signed by or on behalf of the firm, stating that at the time of the alleged offence the vehicle concerned was hired under a hiring agreement to which this section applies, together with—
  - (a) a copy of that hiring agreement, and
  - (b) a copy of a statement of liability signed by the hirer under that hiring agreement.
- (3) In this section a “statement of liability” means a statement made by the hirer under a hiring agreement to which this section applies to the effect that the hirer acknowledges that he will be liable, as the owner of the vehicle, in respect of any fixed penalty offence which may be committed with respect to the vehicle during the currency of the hiring agreement and giving such information as may be prescribed.

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(4) In any case where this section applies, sections 63, 64 and 65 of this Act shall have effect as if—

- (a) any reference to the owner of the vehicle were a reference to the hirer under the hiring agreement, and
- (b) any reference to a statutory statement of ownership were a reference to a statutory statement of hiring,

and accordingly references in this Part of this Act (with the exceptions mentioned below) to a notice to owner include references to a notice served under section 63 of this Act as it applies by virtue of this section.

This subsection does not apply to references to a notice to owner in this section or in section 81(2)(b) of or Part I of Schedule 4 to this Act.

(5) In any case where this section applies, a person authorised in that behalf by the chief officer of police to whom the documents mentioned in subsection (2) above are provided may, at any reasonable time within six months after service of the notice to owner (and on the production of his authority) require the firm to produce the originals of the hiring agreement and statement of liability in question.

(6) If a vehicle-hire firm fails to produce the original of a document when required to do so under subsection (5) above, this section shall thereupon cease to apply (and section 64 of this Act shall apply accordingly in any such case after that time as it applies in a case where the person on whom the notice to owner was served has failed to provide a statutory statement of ownership in response to the notice within the period allowed).

(7) This section applies to a hiring agreement under the terms of which the vehicle concerned is let to the hirer for a fixed period of less than six months (whether or not that period is capable of extension by agreement between the parties or otherwise); and any reference in this section to the currency of the hiring agreement includes a reference to any period during which, with the consent of the vehicle-hire firm, the hirer continues in possession of the vehicle as hirer, after the expiry of the fixed period specified in the agreement, but otherwise on the terms and conditions so specified.

(8) In this section—

“hiring agreement” refers only to an agreement which contains such particulars as may be prescribed and does not include a hire-purchase agreement within the meaning of the <sup>M34</sup>Consumer Credit Act 1974, and

“vehicle-hire firm” means any person engaged in hiring vehicles in the course of a business.

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

C63 Definitions in s. 66 applied (1.10.1991) by Road Traffic Act 1991 (c. 40, SIF 107:1), s. 82(1); S.I. 1991/2054, art. 3, Sch

**Marginal Citations**

M34 1974 c. 39.

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**67 False statements in response to notices to owner. E+W+S**

A person who, in response to a notice to owner, provides a statement which is false in a material particular and does so recklessly or knowing it to be false in that particular is guilty of an offence.

**68 “Owner”, “statutory statement” and “official form”. E+W+S**

- (1) For the purposes of this Part of this Act, the owner of a vehicle shall be taken to be the person by whom the vehicle is kept; and for the purposes of determining, in the course of any proceedings brought by virtue of section 64(3) of this Act, who was the owner of a vehicle at any time, it shall be presumed that the owner was the person who was the registered keeper of the vehicle at that time.
- (2) Notwithstanding the presumption in subsection (1) above, it is open to the defence in any proceedings to prove that the person who was the registered keeper of a vehicle at a particular time was not the person by whom the vehicle was kept at that time and to the prosecution to prove that the vehicle was kept by some other person at that time.
- (3) References in this Part of this Act to statutory statements of any description are references to the statutory statement of that description defined in Schedule 4 to this Act; and that Schedule shall also have effect for the purpose of requiring certain information to be provided in official forms for the statutory statements so defined to assist persons in completing those forms and generally in determining what action to take in response to a notice to owner.
- (4) In this Part of this Act “official form”, in relation to a statutory statement mentioned in Schedule 4 to this Act or a statement under section 66(2) of this Act, means a document supplied by or on behalf of a chief officer of police for use in making that statement.

*The fixed penalty procedure*

**69 Payment of penalty. E+W+S**

- (1) Payment of a fixed penalty under this Part of this Act must be made to such justices’ clerk or, in Scotland, clerk of court as may be specified in the fixed penalty notice relating to that penalty.
- (2) Without prejudice to payment by any other method, payment of a fixed penalty under this Part of this Act may be made by properly addressing, pre-paying and posting a letter containing the amount of the penalty (in cash or otherwise) and, unless the contrary is proved, shall be regarded as having been made at the time at which that letter would be delivered in the ordinary course of post.
- (3) A letter is properly addressed for the purposes of subsection (2) above if it is addressed to the fixed penalty clerk at the address specified in the fixed penalty notice relating to the fixed penalty as the address at which the fixed penalty may be paid.
- (4) References in this Part of this Act [<sup>F148</sup>(except in sections 75 to 77)], in relation to any fixed penalty or fixed penalty notice, to the fixed penalty clerk are references to the clerk specified in accordance with subsection (1) above in the fixed penalty notice relating to that penalty or (as the case may be) in that fixed penalty notice.

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### Textual Amendments

**F148** Words in s. 69(4) inserted (1.7.1992) by Road Traffic Act 1991 (c.40, SIF 107:1), s. 48, Sch. 4 para.105; S.I. 1992/1286, art. 2, Sch.

## 70 Registration certificates. **E+W+S**

- (1) This section and section 71 of this Act apply where by virtue of section 55(3) or 64(2) of this Act a sum determined by reference to the fixed penalty for any offence may be registered under section 71 of this Act for enforcement against any person as a fine.

In this section and section 71 of this Act—

- (a) that sum is referred to as a “sum payable in default”, and
  - (b) the person against whom that sum may be so registered is referred to as the “defaulter”.
- (2) Subject to subsection (3) below, the chief officer of police may in respect of any sum payable in default issue a certificate (referred to in this section and section 71 as a “registration certificate”) stating that the sum is registrable under section 71 for enforcement against the defaulter as a fine.
- (3) Where the fixed penalty notice in question was given to the defaulter under section 54 in respect of an offence committed in Scotland—
- (a) subsection (2) above does not apply, but
  - (b) the fixed penalty clerk must, unless the defaulter appears to him to reside within the jurisdiction of the court of summary jurisdiction of which he is himself the clerk, issue a registration certificate in respect of the sum payable in default.
- (4) Where the chief officer of police or the fixed penalty clerk issues a registration certificate under this section, he must—
- (a) if the defaulter appears to him to reside in England and Wales, cause it to be sent to the clerk to the justices for the petty sessions area in which the defaulter appears to him to reside, and
  - (b) if the defaulter appears to him to reside in Scotland, cause it to be sent to the clerk of a court of summary jurisdiction for the area in which the defaulter appears to him to reside.
- (5) A registration certificate issued under this section in respect of any sum payable in default must—
- (a) give particulars of the offence to which the fixed penalty notice relates,
  - (b) indicate whether registration is authorised under section 55(3) or 64(2) of this Act, and
  - (c) state the name and last known address of the defaulter and the amount of the sum payable in default.

## 71 Registration of sums payable in default. **E+W+S**

- (1) Where the clerk to the justices for a petty sessions area receives a registration certificate issued under section 70 of this Act in respect of any sum payable in default,

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- he must, subject to subsection (4) below, register that sum for enforcement as a fine in that area by entering it in the register of a magistrates' court acting for that area.
- (2) Where the clerk of a court of summary jurisdiction receives a registration certificate issued under section 70 of this Act in respect of any sum payable in default, he must, subject to subsection (4) below, register that sum for enforcement as a fine by that court.
- (3) Where—
- (a) the fixed penalty notice in question was given to the defaulter under section 54 of this Act in respect of an offence committed in Scotland, and
  - (b) the defaulter appears to the fixed penalty clerk to reside within the jurisdiction of the court of summary jurisdiction of which he is himself the clerk,
- the fixed penalty clerk must register the sum payable in default for enforcement as a fine by that court.
- (4) Where it appears to the clerk receiving a registration certificate issued under section 70 of this Act in respect of any sum payable in default that the defaulter does not reside in the petty sessions area or (as the case may be) within the jurisdiction of the court of summary jurisdiction in question—
- (a) he is not required by subsection (1) or (2) above to register that sum, but
  - (b) he must cause the certificate to be sent to the appropriate clerk,
- and subsection (1) or, as the case may be, (2) above shall apply accordingly on receipt by the appropriate clerk of the certificate as it applies on receipt by the clerk to whom it was originally sent.
- (5) For the purposes of subsection (4) above, the appropriate clerk—
- (a) if the defaulter appears to the clerk receiving the registration certificate to reside in England and Wales, is the clerk to the justices for the petty sessions area in which the defaulter appears to him to reside, and
  - (b) if the defaulter appears to the clerk receiving the registration certificate to reside in Scotland, is the clerk of a court of summary jurisdiction for the area in which the defaulter appears to him to reside.
- (6) On registering any sum under this section for enforcement as a fine, the clerk to the justices for a petty sessions area or, as the case may be, the clerk of a court of summary jurisdiction must give to the defaulter notice of registration—
- (a) specifying the amount of that sum, and
  - (b) giving the information with respect to the offence and the authority for registration included in the registration certificate by virtue of section 70(5)(a) and (b) of this Act or (in a case within subsection (3) above) the corresponding information.
- (7) On the registration of any sum in a magistrates' court or a court of summary jurisdiction by virtue of this section any enactment referring (in whatever terms) to a fine imposed or other sum adjudged to be paid on the conviction of such a court shall have effect in the case in question as if the sum so registered were a fine imposed by that court on the conviction of the defaulter on the date of the registration.
- (8) Accordingly, in the application by virtue of this section of the provisions of the <sup>M35</sup>Magistrates' Courts Act 1980 relating to the satisfaction and enforcement of sums adjudged to be paid on the conviction of a magistrates' court, section 85 of that Act (power to remit a fine in whole or in part) is not excluded by subsection (2) of that



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section (references in that section to a fine not to include any other sum adjudged to be paid on a conviction) from applying to a sum registered in a magistrates' court by virtue of this section.

- (9) For the purposes of this section, where the defaulter is a body corporate, the place where that body resides and the address of that body are either of the following—
- (a) the registered or principal office of that body, and
  - (b) the address which, with respect to the vehicle concerned, is the address recorded in the record kept under [F149]the Vehicle Excise and Registration Act 1994] as being that body's address.

#### Textual Amendments

F149 Words in S. 71(9)(b) substituted (1.9.1994) by 1994 c. 22, ss. 63, 66, Sch. 3 para. 25(1) (with s. 57(4))

#### Marginal Citations

M35 1980 c. 43.

## 72 Notices on-the-spot or at a police station: when registration and endorsement invalid. **E+W+S**

- (1) This section applies where—
- (a) a person who has received notice of the registration, by virtue of section 55(3) of this Act, of a sum under section 71 of this Act for enforcement against him as a fine makes a statutory declaration to the effect mentioned in subsection (2) below, and
  - (b) that declaration is, within twenty-one days of the date on which the person making it received notice of the registration, served on the clerk of the relevant court.
- (2) The statutory declaration must state—
- (a) that the person making the declaration was not the person to whom the relevant fixed penalty notice was given, or
  - (b) that he gave notice requesting a hearing in respect of the alleged offence as permitted by the fixed penalty notice before the end of the suspended enforcement period.
- (3) In any case within subsection (2)(a) above, the relevant fixed penalty notice, the registration and any proceedings taken before the declaration was served for enforcing payment of the sum registered shall be void.
- (4) Where in any case within subsection (2)(a) above the person to whom the relevant fixed penalty notice was given surrendered a licence [F150]and its counterpart] held by the person making the declaration, any endorsement of [F151]that counterpart] made under section 57 of this Act in respect of the offence in respect of which that notice was given shall be void.
- (5) In any case within subsection (2)(b) above—
- (a) the registration, any proceedings taken before the declaration was served for enforcing payment of the sum registered, and any endorsement, in respect of the offence in respect of which the relevant fixed penalty notice was given,

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- made under section 57 of this Act before the declaration was served, shall be void, and
- (b) the case shall be treated after the declaration is served as if the person making the declaration had given notice requesting a hearing in respect of the alleged offence as stated in the declaration.
- (6) The clerk of the relevant court must—
- (a) cancel an endorsement of [<sup>F152</sup>the counterpart of] a licence under section 57 of this Act that is void by virtue of this section on production of the licence [<sup>F152</sup>and its counterpart] to him for that purpose, and
- (b) send notice of the cancellation to the Secretary of State.
- (7) References in this section to the relevant fixed penalty notice are to the fixed penalty notice relating to the fixed penalty concerned.

#### Textual Amendments

**F150** Words inserted by S.I. 1990/144, regs. 2(2), 3, Sch. 2 para. 20(a)(i)(ii)

**F151** Words substituted by S.I. 1990/144, regs. 2(2), 3, Sch. 2 para. 20(a)(i)(ii)

**F152** Words inserted by S.I. 1990/144, regs. 2(2), 3, Sch. 2 para. 20(b)(i)(ii)

### 73 Notices fixed to vehicles: when registration invalid. **E+W+S**

- (1) This section applies where—
- (a) a person who has received notice of the registration, by virtue of section 64(2) of this Act, of a sum under section 71 of this Act for enforcement against him as a fine makes a statutory declaration to the effect mentioned in subsection (2) below, and
- (b) that declaration is, within twenty-one days of the date on which the person making it received notice of the registration, served on the clerk of the relevant court.
- (2) The statutory declaration must state either—
- (a) that the person making the declaration did not know of the fixed penalty concerned or of any fixed penalty notice or notice to owner relating to that penalty until he received notice of the registration, or
- (b) that he was not the owner of the vehicle at the time of the alleged offence of which particulars are given in the relevant notice to owner and that he has a reasonable excuse for failing to comply with that notice, or
- (c) that he gave notice requesting a hearing in respect of that offence as permitted by the relevant notice to owner before the end of the period allowed for response to that notice.
- (3) In any case within subsection (2)(a) or (b) above—
- (a) the relevant notice to owner,
- (b) the registration, and
- (c) any proceedings taken before the declaration was served for enforcing payment of the sum registered,

shall be void but without prejudice, in a case within subsection (2)(a) above, to the service of a further notice to owner under section 63 of this Act on the person making the declaration.

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This subsection applies whether or not the relevant notice to owner was duly served in accordance with that section on the person making the declaration.

- (4) In any case within subsection (2)(c) above—
- (a) no proceedings shall be taken, after the statutory declaration is served until the end of the period of twenty-one days following the date of that declaration, for enforcing payment of the sum registered, and
  - (b) where before the end of that period a notice is served by or on behalf of the chief officer of police on the person making the declaration asking him to provide a new statutory statement of ownership to that chief officer of police before the end of the period of twenty-one days from the date on which the notice is served, no such proceedings shall be taken until the end of the period allowed for response to that notice.
- (5) Where in any case within subsection (2)(c) above—
- (a) no notice is served by or on behalf of the chief officer of police in accordance with subsection (4) above, or
  - (b) such a notice is so served and the person making the declaration provides a new statutory statement of ownership in accordance with the notice,
- then—
- (i) the registration and any proceedings taken before the declaration was served for enforcing payment of the sum registered shall be void, and
  - (ii) the case shall be treated after the time mentioned in subsection (6) below as if the person making the declaration had given notice requesting a hearing in respect of the alleged offence as stated in the declaration.
- (6) The time referred to in subsection (5) above is—
- (a) in a case within paragraph (a) of that subsection, the end of the period of twenty-one days following the date of the statutory declaration,
  - (b) in a case within paragraph (b) of that subsection, the time when the statement is provided.
- (7) In any case where notice is served by or on behalf of the chief officer of police in accordance with subsection (4) above, he must cause the clerk of the relevant court to be notified of that fact immediately on service of the notice.
- (8) References in this section to the relevant notice to owner are to the notice to owner relating to the fixed penalty concerned.

#### **74 Provisions supplementary to sections 72 and 73. E+W+S**

- (1) In any case within section 72(2)(b) or 73(2) of this Act—
- (a) section 127(1) of the <sup>M36</sup>Magistrates' Courts Act 1980 (limitation of time), and
  - (b) section 331(1) of the <sup>M37</sup>Criminal Procedure (Scotland) Act 1975 (statutory offences time limit),
- shall have effect as if for the reference to the time when the offence was committed or (as the case may be) the time when the contravention occurred there were substituted a reference to the date of the statutory declaration made for the purposes of section 72(1) or, as the case may be, 73(1).
- (2) Where, on the application of a person who has received notice of the registration of a sum under section 71 of this Act for enforcement against him as a fine, it appears to the

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relevant court (which for this purpose may be composed of a single justice) that it was not reasonable to expect him to serve, within twenty-one days of the date on which he received the notice, a statutory declaration to the effect mentioned in section 72(2) or, as the case may be, 73(2) of this Act, the court may accept service of such a declaration by that person after that period has expired.

- (3) A statutory declaration accepted under subsection (2) above shall be taken to have been served as required by section 72(1) or, as the case may be, section 73(1) of this Act.
- (4) For the purposes of sections 72(1) and 73(1) of this Act, a statutory declaration shall be taken to be duly served on the clerk of the relevant court if it is delivered to him, left at his office, or sent in a registered letter or by the recorded delivery service addressed to him at his office.
- (5) In sections 72, 73 and this section—
  - (a) references to the relevant court are—
    - (i) in the case of a sum registered under section 71 of this Act for enforcement as a fine in a petty sessions area in England and Wales, references to any magistrates' court acting for that area, and
    - (ii) in the case of a sum registered under that section for enforcement as a fine by a court of summary jurisdiction in Scotland, references to that court,
  - (b) references to the clerk of the relevant court, where that court is a magistrates' court, are references to a clerk to the justices for the petty sessions area for which that court is acting, and
  - (c) references to proceedings for enforcing payment of the sum registered are references to any process issued or other proceedings taken for or in connection with enforcing payment of that sum.
- (6) For the purposes of sections 72, 73 and this section, a person shall be taken to receive notice of the registration of a sum under section 71 of this Act for enforcement against him as a fine when he receives notice either of the registration as such or of any proceedings for enforcing payment of the sum registered.
- (7) Nothing in the provisions of sections 72 or 73 or this section is to be read as prejudicing any rights a person may have apart from those provisions by virtue of the invalidity of any action purportedly taken in pursuance of this Part of this Act which is not in fact authorised by this Part of this Act in the circumstances of the case; and, accordingly, references in those provisions to the registration of any sum or to any other action taken under or by virtue of any provision of this Part of this Act are not to be read as implying that the registration or action was validly made or taken in accordance with that provision.

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**Marginal Citations**

**M36** 1980 c. 43.

**M37** 1975 c. 21.

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*[<sup>F153</sup>Conditional offer of fixed penalty]*

**Textual Amendments**

**F153** Ss. 75-77 substituted (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), s.34; S.I. 1992/1286, art. 2, Sch.

**[<sup>F154</sup>75 Issue of conditional offer. E+W+S**

- (1) Where in England and Wales—
  - (a) a constable has reason to believe that a fixed penalty offence has been committed, and
  - (b) no fixed penalty notice in respect of the offence has been given under section 54 of this Act or fixed to a vehicle under section 62 of this Act,a notice under this section may be sent to the alleged offender by or on behalf of the chief officer of police.
- (2) Where in Scotland a procurator fiscal receives a report that—
  - (a) an offence specified in Schedule 3 to this Act has been committed,
  - (b) an offence specified in Schedule 5 to this Act has been committed,
  - (c) an offence referred to in paragraph (a) or (b) above has been committed, being an offence of causing or permitting a vehicle to be used by another person in contravention of any provision made or any restriction or prohibition imposed by or under any enactment, or
  - (d) an offence of aiding, abetting, counselling, procuring or inciting the commission of an offence referred to in this subsection, has been committed,he may send a notice under this section to the alleged offender.
- (3) Where in Scotland, a constable—
  - (a) on any occasion has reason to believe that a person he finds is committing or has on that occasion committed a fixed penalty offence, he may hand to that person,
  - (b) in any case has reason to believe that a fixed penalty offence has been committed, he or another person authorised in that respect by the chief constable may send to the alleged offender,a notice under this section.
- (4) Subsections (2) and (3) above shall not apply where a fixed penalty notice has been fixed to a vehicle under section 62 of this Act.
- (5) A notice under this section is referred to in this section and sections 76 and 77 as a “conditional offer”.
- (6) Where a person issues a conditional offer, he must notify the justices’ clerk, or in Scotland clerk of court, specified in it of its issue and its terms; and that clerk is referred to in this section and sections 76 and 77 as “the fixed penalty clerk”.
- (7) A conditional offer must—
  - (a) give such particulars of the circumstances alleged to constitute the offence to which it relates as are necessary for giving reasonable information about the alleged offence,

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- (b) state the amount of the fixed penalty for that offence, and
  - (c) state that proceedings against the alleged offender cannot be commenced in respect of that offence until the end of the period of twenty-eight days following the date on which the conditional offer was issued or such longer period as may be specified in the conditional offer.
- (8) A conditional offer must indicate that if the following conditions are fulfilled, that is—
- (a) within the period of twenty-eight days following the date on which the offer was issued, or such longer period as may be specified in the offer, the alleged offender—
    - (i) makes payment of the fixed penalty to the fixed penalty clerk, and
    - (ii) where the offence to which the offer relates is an offence involving obligatory endorsement, at the same time delivers his licence and its counterpart to that clerk, and
  - (b) where his licence and its counterpart are so delivered, that clerk is satisfied on inspecting them that, if the alleged offender were convicted of the offence, he would not be liable to be disqualified under section 35 of this Act, any liability to conviction of the offence shall be discharged.
- (9) For the purposes of the condition set out in subsection (8)(b) above, it shall be assumed, in the case of an offence in relation to which a range of numbers is shown in the last column of Part I of Schedule 2 to this Act, that the number of penalty points to be attributed to the offence would be the lowest in the range.
- (10) The Secretary of State may by order provide for offences to become or (as the case may be) to cease to be offences in respect of which a conditional offer may be sent under subsection (2)(b) above, and may make such modifications of the provisions of this Part of this Act as appear to him to be necessary for the purpose.
- (11) An offence committed by aiding, abetting, counselling, procuring or inciting the commission of an offence which is an offence involving obligatory endorsement is itself an offence involving obligatory endorsement for the purposes of the application of this Part of this Act in Scotland.
- (12) In relation to licences which came into force before 1st June 1990, the references in subsection (8) above to the counterpart of a licence shall be disregarded.]

#### Textual Amendments

**F154** Ss. 75-77 substituted (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), s.34; S.I. 1992/1286, art. 2, Sch.

#### [<sup>F155</sup>76 Effect of offer and payment of penalty. E+W+S

- (1) This section applies where a conditional offer has been sent to a person under section 75 of this Act.
- (2) No proceedings shall be brought against any person for the offence to which the conditional offer relates until—
  - (a) in England and Wales, the chief officer of police, or
  - (b) in Scotland, the procurator fiscal or (where the conditional offer was issued under section 75(3) of this Act) the chief constable,

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receives notice in accordance with subsection (4) or (5) below.

- (3) Where the alleged offender makes payment of the fixed penalty in accordance with the conditional offer, no proceedings shall be brought against him for the offence to which the offer relates.
- (4) Where—
  - (a) the alleged offender tenders payment in accordance with the conditional offer and delivers his licence and its counterpart to the fixed penalty clerk, but
  - (b) it appears to the clerk, on inspecting the licence and counterpart, that the alleged offender would be liable to be disqualified under section 35 of this Act if he were convicted of the offence to which the conditional offer relates, then subsection (3) above shall not apply and the clerk must return the licence and its counterpart to the alleged offender together with the payment and give notice that he has done so to the person referred to in subsection (2)(a) or (b) above.
- (5) Where, on the expiry of the period of twenty-eight days following the date on which the conditional offer was made or such longer period as may be specified in the offer, the conditions specified in the offer in accordance with section 75(8)(a) of this Act have not been fulfilled, the fixed penalty clerk must notify the person referred to in subsection (2)(a) or (b) above.
- (6) In determining for the purposes of subsection (4)(b) above whether a person convicted of an offence would be liable to disqualification under section 35, it shall be assumed, in the case of an offence in relation to which a range of numbers is shown in the last column of Part I of Schedule 2 to this Act, that the number of penalty points to be attributed to the offence would be the lowest in the range.
- (7) In any proceedings a certificate that by a date specified in the certificate payment of a fixed penalty was or was not received by the fixed penalty clerk shall, if the certificate purports to be signed by that clerk, be evidence, or in Scotland sufficient evidence, of the facts stated.
- (8) In relation to licences which came into force before 1st June 1990, the references in subsection (4) above to the counterpart of a licence shall be disregarded.
- (9) In Scotland, the Secretary of State may by regulations vary the provisions of subsection (2)(b) above.]

#### Textual Amendments

**F155** Ss. 75-77 substituted (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), s.34; S.I. 1992/1286, art. 2, Sch.

#### [<sup>F156</sup>77 Endorsement where penalty paid. **E+W+S**

- (1) Where—
  - (a) in pursuance of a conditional offer a person (referred to in this section as the “licence holder”) makes payment of the fixed penalty to the fixed penalty clerk and delivers his licence and its counterpart to the clerk, and
  - (b) the clerk is not required by subsection (4) of section 76 of this Act to return the licence and its counterpart to him and did not, before the payment was

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tendered, notify the person referred to in section 76(2)(a) or (b) of this Act under subsection (5) of that section,

the clerk must forthwith endorse the relevant particulars on the counterpart of the licence and return it to the licence holder together with the licence.

- (2) Where it appears to a fixed penalty clerk in Scotland that there is an error in an endorsement made by virtue of this section on the counterpart of a licence he may amend the endorsement so as to correct the error; and the amended endorsement shall have effect and shall be treated for all purposes as if it had been correctly made on receipt of the fixed penalty.
- (3) Subject to subsection (4) below, where a cheque tendered in payment is subsequently dishonoured—
  - (a) any endorsement made by a clerk under subsection (1) above remains effective, notwithstanding that the licence holder is still liable to prosecution in respect of the alleged offence to which the endorsement relates, and
  - (b) the clerk must, upon the expiry of the period specified in the conditional offer or, if the period has expired, forthwith notify the person referred to in section 76(2)(a) or (b) of this Act that no payment has been made.
- (4) When proceedings are brought against a licence holder after a notice has been given in pursuance of subsection (3)(b) above, the court—
  - (a) must order the removal of the fixed penalty endorsement from the counterpart of the licence, and
  - (b) may, on finding the licence holder guilty, make any competent order of endorsement or disqualification and pass any competent sentence.
- (5) The reference in subsection (1) above to the relevant particulars is to—
  - (a) particulars of the offence, including the date when it was committed, and
  - (b) the number of penalty points to be attributed to the offence.
- (6) The fixed penalty clerk must send notice to the Secretary of State—
  - (a) of any endorsement under subsection (1) above and of the particulars endorsed,
  - (b) of any amendment under subsection (2) above, and
  - (c) of any order under subsection (4)(a) above.
- (7) Where the counterpart of a person's licence is endorsed under this section he shall be treated for the purposes of sections 13(4), 28, 29 and 45 of this Act and of the Rehabilitation of Offenders Act 1974 as if—
  - (a) he had been convicted of the offence,
  - (b) the endorsement had been made in pursuance of an order made on his conviction by a court under section 44 of this Act, and
  - (c) the particulars of the offence endorsed by virtue of subsection (5)(a) above were particulars of his conviction of that offence.
- (8) In relation to any endorsement of the counterpart of a person's licence under this section—
  - (a) the reference in section 45(4) of this Act to the order for endorsement, and
  - (b) the references in section 13(4) of this Act to any order made on a person's conviction,

are to be read as references to the endorsement itself.



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- (9) In relation to licences which came into force before 1st June 1990, the references in this section to the counterpart of a licence shall be disregarded or, as the case may require, construed as references to the licence itself.]

#### Textual Amendments

**F156** Ss. 75-77 substituted (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), s.34; S.I. 1992/1286, art. 2, Sch.

#### *Proceedings in fixed penalty cases*

#### **78** General restriction on proceedings. **E+W+S**

- (1) Proceedings shall not be brought against any person for the offence to which a fixed penalty notice relates until the end of the suspended enforcement period.
- (2) Proceedings shall not be brought against any person for the offence to which a fixed penalty notice relates if the fixed penalty is paid in accordance with this Part of this Act before the end of the suspended enforcement period.

#### **79** Statements by constables. **E+W**

- (1) In any proceedings a certificate that a copy of a statement by a constable with respect to the alleged offence (referred to in this section as a “constable’s witness statement”) was included in or given with a fixed penalty notice or a notice under section 54(3) of this Act given to the accused on a date specified in the certificate shall, if the certificate purports to be signed by the constable or authorised person who gave the accused the notice, be evidence of service of a copy of that statement by delivery to the accused on that date.
- (2) In any proceedings a certificate that a copy of a constable’s witness statement was included in or served with a notice to owner served on the accused in the manner and on a date specified in the certificate shall, if the certificate purports to be signed by any person employed by the police authority for the police area in which the offence to which the proceedings relate is alleged to have been committed, be evidence of service in the manner and on the date so specified both of a copy of that statement and of the notice to owner.
- (3) Any address specified in any such certificate as is mentioned in subsection (2) above as being the address at which service of the notice to owner was effected shall be taken for the purposes of any proceedings in which the certificate is tendered in evidence to be the accused’s proper address, unless the contrary is proved.
- (4) Where a copy of a constable’s witness statement is included in or served with a notice to owner served in any manner in which the notice is authorised to be served under this Part of this Act, the statement shall be treated as duly served for the purposes of section 9 of the <sup>M38</sup>Criminal Justice Act 1967 (proof by written statement) notwithstanding that the manner of service is not authorised by subsection (8) of that section.
- (5) In relation to any proceedings in which service of a constable’s witness statement is proved by certificate under this section—

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- (a) that service shall be taken for the purposes of subsection (2)(c) of that section (copy of statement to be tendered in evidence to be served before hearing on other parties to the proceedings by or on behalf of the party proposing to tender it) to have been effected by or on behalf of the prosecutor, and
  - (b) subsection (2)(d) of that section (time for objection) shall have effect with the substitution, for the reference to seven days from the service of the copy of the statement, of a reference to seven days from the relevant date.
- (6) In subsection (5)(b) above “relevant date” means—
- (a) where the accused gives notice requesting a hearing in respect of the offence in accordance with any provision of this Part of this Act, the date on which he gives that notice, and
  - (b) where a notice in respect of the offence was given to the accused under section 54(4) of this Act but no fixed penalty notice is given in respect of it, the last day for production of the notice under section 54(5) at a police station in accordance with that section.
- (7) This section does not extend to Scotland.

#### Marginal Citations

M38 1967 c. 80.

### 80 Certificates about payment. **E+W+S**

In any proceedings a certificate—

- (a) that payment of a fixed penalty was or was not received, by a date specified in the certificate, by the fixed penalty clerk, or
- (b) that a letter containing an amount sent by post in payment of a fixed penalty was marked as posted on a date so specified,

shall, if the certificate purports to be signed by the fixed penalty clerk, be evidence (and, in Scotland, sufficient evidence) of the facts stated.

### 81 Documents signed by the accused. **E+W+S**

(1) Where—

- (a) any person is charged with a fixed penalty offence, and
- (b) the prosecutor produces to the court a document to which this subsection applies purporting to have been signed by the accused,

the document shall be presumed, unless the contrary is proved, to have been signed by the accused and shall be evidence (and, in Scotland, sufficient evidence) in the proceedings of any facts stated in it tending to show that the accused was the owner, the hirer or the driver of the vehicle concerned at a particular time.

(2) Subsection (1) above applies to any document purporting to be—

- (a) a notice requesting a hearing in respect of the offence charged given in accordance with a fixed penalty notice relating to that offence, or
- (b) a statutory statement of any description defined in Schedule 4 to this Act or a copy of a statement of liability within the meaning of section 66 of this Act provided in response to a notice to owner.

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### Miscellaneous

## 82 Accounting for fixed penalties: England and Wales. **E+W+S**

(1) In England and Wales, sums paid by way of fixed penalty for an offence shall be treated for the purposes of section 61 (application of fines and fees) of the <sup>M39</sup>Justices of the Peace Act 1979 as if they were fines imposed on summary conviction for that offence.

[<sup>F157</sup>(2) Where, in England and Wales, a justices' clerk for a petty sessions area comprised in the area of one magistrates' courts committee ("the first committee") discharges functions in connection with a fixed penalty for an offence alleged to have been committed in a petty sessions area comprised in the area of another magistrates' courts committee ("the second committee")—

- (a) the paying authority or authorities in relation to the second committee must make to the paying authority or authorities in relation to the first committee such payment in connection with the discharge of those functions as may be agreed between all the paying authorities concerned or, in default of such agreement, as may be determined by the Lord Chancellor, and
- (b) any such payment between paying authorities shall be taken into account in determining for the purposes of section 59 of the Justices of the <sup>M40</sup>Peace Act 1979 the net cost to the responsible authorities of the functions referred to in subsection (1) of that section.

(2A) In subsection (2) above "paying authority" and "responsible authority" have the same meaning as in section 55 of the Justices of the Peace Act 1979.]

(3) Subsection (2) above does not apply to functions discharged in connection with a fixed penalty on or after the registration of a sum determined by reference to the penalty under section 71 of this Act.

#### Textual Amendments

**F157** S. 82(2) substituted (1.4.1995) by 1994 c. 29, s. 91, **Sch. 8 Pt. II**, para 32; S.I. 1995/685, **arts. 4(1), 7(2)**

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

**C64** S. 82 amended (*temp.*) (1.4.1995) by S.I. 1995/685, **reg. 6(2)(b)**

**C65** S. 82(1)(2): Functions of the Secretary of State transferred to the Lord Chancellor (1.4.1992) by S.I. 1992/709, **art. 2(1), Sch. 1**

#### Marginal Citations

**M39** 1979 c. 55.

**M40** 1979 c. 55.

## 83 Powers of court where clerk deceived. **E+W+S**

(1) This section applies where—

- (a) in endorsing [<sup>F158</sup>the counterpart of] any person's licence under section 57 of this Act, the fixed penalty clerk is deceived as to whether endorsement under that section is excluded by section 61(2) of this Act by virtue of the fact that the licence holder would be liable to be disqualified under section 35 of this Act if he were convicted of the offence, or

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- (b) in endorsing [<sup>F159</sup>the counterpart of] any person's licence under section 77 of this Act the clerk of court specified in the conditional offer (within the meaning of that section) is deceived as to whether he is required by section 76(5) of this Act to return the licence [<sup>F160</sup>and its counterpart without endorsing the counterpart] by virtue of the fact that the licence holder would be liable to be disqualified under section 35 of this Act if he were convicted of the offence.
- (2) If—
- (a) the deception constituted or was due to an offence committed by the licence holder, and
- (b) the licence holder is convicted of that offence,
- the court by or before which he is convicted shall have the same powers and duties as it would have had if he had also been convicted by or before it of the offence of which particulars were endorsed under section 57 or, as the case may be, 77 of this Act.

#### Textual Amendments

**F158** Words inserted by S.I. 1990/144, regs. 2(2), 3, Sch. 2 para. 24(a)

**F159** Words inserted by S.I. 1990/144, regs. 2(2), 3, Sch. 2, para. 24(b)(i)(ii)

**F160** Words substituted by S.I. 1990/144, regs. 2(2), 3, Sch. 2, para. 24(b)(i)(ii)

#### 84 Regulations. **E+W+S**

The Secretary of State may by regulations make provision as to any matter incidental to the operation of this Part of this Act, and in particular—

- (a) for prescribing any information or further information to be provided in any notice, notification, certificate or receipt under section 52(1), 54(4), 56, 59(1), 60(1), 63(2), 70(2) and (3)(b), 73(4)(b), 75(2) and (3) or 76(5) and (6) of this Act or in any official form for a statutory statement mentioned in Schedule 4 to, or a statement under section 66(2) of, this Act,
- (b) for requiring any such official form to be served with any notice served under section 63 or 73(4) of this Act, and
- (c) for prescribing the duties of justices' clerks or (as the case may be) clerks of courts of summary jurisdiction and the information to be supplied to them.

#### 85 Service of documents. **E+W+S**

- (1) Subject to any requirement of this Part of this Act with respect to the manner in which a person may be provided with any such document, he may be provided with the following documents by post (but without prejudice to any other method of providing him with them), that is to say—
- (a) any of the statutory statements mentioned in Schedule 4 to this Act, and
- (b) any of the documents mentioned in section 66(2) of this Act.
- (2) Where a notice requesting a hearing in respect of an offence is permitted by a fixed penalty notice or notice to owner relating to that offence to be given by post, section 7 of the <sup>M41</sup>Interpretation Act 1978 (service of documents by post) shall apply as if that notice were permitted to be so given by this Act.
- (3) A notice to owner may be served on any person—

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- (a) by delivering it to him or by leaving it at his proper address, or
  - (b) by sending it to him by post,
- and where the person on whom such a notice is to be served is a body corporate it is duly served if it is served on the secretary or clerk of that body.
- (4) For the purposes of this Part of this Act and of section 7 of the <sup>M42</sup>Interpretation Act 1978 as it applies for the purposes of subsection (3) above the proper address of any person in relation to the service on him of a notice to owner is—
- (a) in the case of the secretary or clerk of a body corporate, that of the registered or principal office of that body or the registered address of the person who is or was the registered keeper of the vehicle concerned at the time of service, and
  - (b) in any other case, his last known address at the time of service.
- (5) In subsection (4) above, “registered address”, in relation to the registered keeper of a vehicle, means the address recorded in the record kept under [<sup>F161</sup>the Vehicle Excise and Registration Act 1994] with respect to that vehicle as being that person’s address.

#### Textual Amendments

**F161** Words in s. 85(5) substituted (1.9.1994) by 1994 c. 22, s. 63, **Sch. 3 para. 25(1)** (with s. 57(4))

#### Marginal Citations

**M41** 1978 c. 30.

**M42** 1978 c. 30.

### 86 Functions of traffic wardens. **E+W+S**

- (1) An order under section 95(5) of the <sup>M43</sup>Road Traffic Regulation Act 1984 may not authorise the employment of a traffic warden to discharge any function under this Part of this Act in respect of an offence if the offence appears to the traffic warden to be an offence involving obligatory endorsement [<sup>F162</sup>unless that offence was committed whilst the vehicle concerned was stationary.].
- (2) In so far as an order under that section authorises the employment of traffic wardens for the purposes of this Part of this Act, references in this Part of this Act to a constable or, as the case may be, to a constable in uniform include a traffic warden.

#### Textual Amendments

**F162** Words in s. 86(1) added (1.10.1991) by Road Traffic Act 1991 (c. 40, SIF 107:1), s. 48, **Sch. 4 para. 106**; S.I. 1991/2054, art. 3, **Sch**

#### Marginal Citations

**M43** 1984 c. 27.

### 87 Guidance on application of Part III. **E+W+S**

The Secretary of State must issue guidance to chief officers of police for police areas in respect of the operation of this Part of this Act with the objective so far as possible of working towards uniformity.

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## 88 Procedure for regulations and orders. **E+W+S**

- (1) Any power conferred by this Part of this Act on the Secretary of State to make any order or regulations shall be exercisable by statutory instrument.
- (2) Before making—
  - (a) an order under section 51, 53 or 75 of this Act, or
  - (b) regulations under section 84 of this Act,
 the Secretary of State must consult with such representative organisations as he thinks fit.
- (3) A statutory instrument containing regulations or an order under any provision of this Part of this Act shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) Regulations under this Part of this Act may—
  - (a) make different provision for different cases, and
  - (b) contain such incidental and supplemental provisions as the Secretary of State considers expedient for the purposes of the regulations.

## 89 Interpretation. **E+W+S**

- (1) In this Part of this Act—
 

“authorised person” has the meaning given by section 54(9) of this Act,

[<sup>F163</sup>“chief constable” means, in Scotland in relation to any conditional offer, the chief constable for the area in which the conditional offer has been issued.]

“chief officer of police” (except in the definition of “authorised person”) means, in relation to any fixed penalty notice [<sup>F164</sup>, notice to owner or conditional offer], the chief officer of police for the police area in which the fixed penalty offence in question is alleged to have been committed,

“court of summary jurisdiction” has the same meaning as in [<sup>F165</sup>section 307(1) of the Criminal Procedure (Scotland) Act 1995],

“driver” except in section 62 of this Act means, in relation to an alleged fixed penalty offence, the person by whom, assuming the offence to have been committed, it was committed,

“justices’ clerk” means the clerk to the justices for a petty sessions area,

“petty sessions area” has the same meaning as in the <sup>M44</sup>Magistrates’ Courts Act 1980, and

“proceedings”, except in relation to proceedings for enforcing payment of a sum registered under section 71 of this Act, means criminal proceedings.
- (2) In this Part of this Act—
  - (a) references to a notice requesting a hearing in respect of an offence are references to a notice indicating that the person giving the notice wishes to contest liability for the offence or seeks a determination by a court with respect to the appropriate punishment for the offence,
  - (b) references to an offence include an alleged offence, and
  - (c) references to the person who is or was at any time the registered keeper of a vehicle are references to the person in whose name the vehicle is or was at that time registered under [<sup>F166</sup>the Vehicle Excise and Registration Act 1994].

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#### Textual Amendments

- F163** Definition in s. 89(1) inserted (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), s. 48, **Sch. 4 para. 107(2)**; S.I. 1992/1286, art. 2, **Sch.**
- F164** Words in s. 89(1) substituted (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), s. 48, **Sch. 4 para. 107(3)**; S.I. 1992/1286, art. 2, **Sch.**
- F165** S. 89(1): words in definition of "court of summary jurisdiction" substituted (1.4.1996) by 1995 c. 13, s. 5, **Sch. 4 para. 71(10)**
- F166** Words in s. 89(2)(c) substituted (1.9.1994) by 1994 c. 22, s. 63, **Sch. 3 para. 25(1)**

#### Marginal Citations

- M44** 1980 c. 43.

## 90 Index to Part III. **E+W+S**

The expressions listed in the left hand column below are respectively defined or (as the case may be) fall to be construed in accordance with the provisions of this Part of this Act listed in the right-hand column in relation to those expressions.

Authorised person	Section 54(9)
Conditional offer	[ <sup>F167</sup> Section 75(3)]
Fixed penalty	Section 53
Fixed penalty clerk	Section 69(4) [ <sup>F168</sup> and 75(4)]
Fixed penalty notice	Section 52
Fixed penalty offence	Section 51
Notice to owner	Sections 63(2) and 66(4)
Notice requesting a hearing in respect of an offence	Section 89(2)
Offence	Section 89(2)
Official form	Section 68(4)
Owner	Section 68(1)
Period allowed for response to a notice to owner	Section 63(5)
Proper address, in relation to the service of a notice to owner	Section 85(4)
Registered keeper	Section 89(2)
Statutory statement of facts	Part II of Schedule 4
Statutory statement of hiring	Part I of Schedule 4
Statutory statement of ownership	Part I of Schedule 4
Suspended enforcement period	Section 52(3)(a)
Time of the alleged offence	Section 63(3)

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### Textual Amendments

- F167** Words in s. 90 substituted (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), s. 48, **Sch. 4 para. 108(a)**; S.I. 1992/1286, **art. 2**, Sch.
- F168** Words in s. 90 added (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), s. 48, **Sch. 4 para. 108(b)**; S.I. 1992/1286, **art. 2**, Sch.

## PART IV **E+W+S**

### MISCELLANEOUS AND GENERAL

#### 91 **Penalty for breach of regulations. **E+W+S****

If a person acts in contravention of or fails to comply with—

- (a) any regulations made by the Secretary of State under the <sup>M45</sup>Road Traffic Act 1988 other than regulations made under section 31, 45 or 132,
- (b) any regulations made by the Secretary of State under the <sup>M46</sup>Road Traffic Regulation Act 1984, other than regulations made under section 28, Schedule 4, Part III of Schedule 9 or Schedule 12,

and the contravention or failure to comply is not made an offence under any other provision of the Traffic Acts, he shall for each offence be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

### Marginal Citations

- M45** 1988 c. 52.  
**M46** 1984 c. 27.

#### [<sup>F169</sup>91A **Application to Community licence holders. **E+W+S****

- (1) The references in sections 7, 26(7) and (8) and (9)(b), 27, 29(1), 30, 31(1), 32, 42(5), 44(1), 46(2), 47(3) and 48(1) and (2) of this Act to a licence includes references to a Community licence; and accordingly the reference in section 27(3)(b) of this Act to the suspension of a licence is to be construed in relation to a Community licence as a reference to the Community licence holder ceasing to be authorised by virtue of section 99(A)(1) of the Road Traffic Act 1988 to drive in Great Britain a motor vehicle of any class.
- (2) The references in sections 26(9)(a) and 27(3) of this Act to a new licence include references to a counterpart of a Community licence.
- (3) In relation to a Community licence holder to whom a counterpart is issued under section 99B of the Road Traffic Act 1988, the references in Part III of this Act (except sections 75(12), 76(8) and 77(9) of this Act) to a licence include references to a Community licence.
- (4) Where a court orders the endorsement of the counterpart of any Community licence held by a person, it must send notice of the endorsement to the Secretary of State.



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- (5) Where a court orders the holder of a Community licence to be disqualified, it must send the Community licence and its counterpart (if any), on their being produced to the court, to the Secretary of State.
- (6) A notice sent by a court to the Secretary of State in pursuance of subsection (4) above must be sent in such manner and to such address and contain such particulars as the Secretary of State may determine, and a Community licence and its counterpart (if any) so sent in pursuance of subsection (5) above must be sent to such address as the Secretary of State may determine.
- (7) Where a Community licence held by a person who is ordered by the court to be disqualified is sent to the Secretary of State in pursuance of subsection (5) above, the Secretary of State—
- (a) must send to the licensing authority in the EEA State in respect of which the Community licence was issued the holder's name and address and particulars of the disqualification, and
  - (b) must (subject to subsection (8) below) return the Community licence to the holder—
    - (i) on the expiry of the period of disqualification, or
    - (ii) if earlier, on being satisfied that the holder has left Great Britain and is not normally resident there.
- (8) Where—
- (a) the Secretary of State would, apart from this subsection, be under a duty on the expiry of the period of disqualification to return a Community licence to a person in pursuance of subsection (7)(b)(i) above, but
  - (b) at that time, the person would not be authorised by virtue of section 99A(1) of the Road Traffic Act 1988 to drive in Great Britain a motor vehicle of any class,
- the Secretary of State must send the Community licence to the licensing authority in the EEA State in respect of which it was issued and explain to them his reasons for so doing.
- (9) A Community licence to be returned to any person under subsection (7) above may be returned to him by delivering it to him or by leaving it at his proper address or by sending it to him by post; and for the purposes of this subsection and section 7 of the Interpretation Act 1978 in its application to this subsection the proper address of any person shall be his latest address as known to the person returning the Community licence.
- (10) In this section “period of disqualification” means, in relation to a Community licence holder, the period for which he is ordered by the court to be disqualified (otherwise than under section 36 of this Act).]

#### Textual Amendments

**F169** S. 91A inserted (1.1.1997) by [S.I. 1996/1974](#), reg. 3, [Sch. 2 para. 4](#)

#### [<sup>F170</sup>91B Effect of endorsement on Community licence holders. **E+W+S**

- (1) An order that any particulars or penalty points are to be endorsed on the counterpart of any Community licence held by the person convicted shall operate as an order that—

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- (a) the counterpart of any Community licence which he may then hold, or
- (b) the counterpart of any licence or Community licence which he may subsequently obtain,

is to be so endorsed until he becomes entitled under subsection (3) below to have a counterpart of his Community licence, or a licence and its counterpart, issued to him free from the particulars or penalty points.

- (2) On the issue of a new counterpart of a Community licence or a new licence to a person, any particulars or penalty points ordered to be endorsed on the counterpart of any Community licence held by him shall be entered on the new counterpart or the counterpart of the new licence (as the case may be) unless he has become entitled under subsection (3) below to have a new counterpart of his Community licence or a new licence issued to him free from those particulars or penalty points.
- (3) A person the counterpart of whose Community 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 (as determined in accordance with section 45(5) of this Act)—
  - (a) a new counterpart of any Community licence then held by him free from the endorsement if he makes an application to the Secretary of State for that purpose in such manner as the Secretary of State may determine, or
  - (b) a new licence with a counterpart free from the endorsement if he applies for a new licence in pursuance of section 97(1) of the Road Traffic Act 1988, surrenders any subsisting licence and its counterpart, pays the fee prescribed by regulations under Part III of that Act and satisfies the other requirements of section 97(1).]

#### Textual Amendments

**F170** S. 91B inserted (1.1.1997) by S.I. 1996/1974, reg. 3, Sch. 2 para. 5

## 92 Application to Crown. **E+W+S**

The following provisions of this Act apply to vehicles and persons in the public service of the Crown: sections 1, 2, 3, 15, 16 [<sup>F171</sup>20] and 49 and the provisions connected with the licensing of drivers.

#### Textual Amendments

**F171** Word in s. 92 inserted (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), s. 48, Sch. 4 para.109; S.I. 1992/1286, art. 2,Sch.

## 93 Application of sections 15 and 16 to persons subject to service discipline. **E+W+S**

- (1) Sections 15 and 16, in their application to persons subject to service discipline, apply outside as well as within Great Britain and have effect as if—
  - (a) references to proceedings for an offence under any enactment included references to proceedings for the corresponding service offence,

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- (b) references to the court included a reference to any naval, military, or air force authority before whom the proceedings take place,
  - (c) references to a constable included references to a member of the provost staff, and
  - (d) in section 15, subsection (4) were omitted.
- (2) Expressions used in this section have the same meaning as in sections [F1723A] to 10 of the Road Traffic Act 1988.

#### Textual Amendments

**F172** Words in s. 93(2) substituted (1.7.1992) by [Road Traffic Act 1991 \(c. 40, SIF 107:1\)](#), s. 48, [Sch. 4 para. 110](#); [S.I. 1992/1286, art. 2](#), Sch.

#### 94 Proceedings in respect of offences in connection with Crown vehicles. **E+W+S**

- (1) Where an offence under the Traffic Acts is alleged to have been committed in connection with a vehicle in the public service of the Crown, proceedings may be brought in respect of the offence against a person nominated for the purpose on behalf of the Crown.
- (2) Subject to subsection (3) below, where any such offence is committed any person so nominated shall also be guilty of the offence as well as any person actually responsible for the offence (but without prejudice to proceedings against any person so responsible).
- (3) Where any person is convicted of an offence by virtue of this section—
  - (a) no order is to be made on his conviction save an order imposing a fine,
  - (b) payment of any fine imposed on him in respect of that offence is not to be enforced against him, and
  - (c) apart from the imposition of any such fine, the conviction is to be disregarded for all purposes other than any appeal (whether by way of case stated or otherwise).

#### 95 Destination of Scottish fines. **E+W+S**

There shall be paid into the Consolidated Fund all fines imposed in respect of the following offences—

- (a) offences committed in Scotland under the provisions of the <sup>M47</sup>Road Traffic Act 1988 down to section 178 or regulations made under those provisions, except—
  - (i) offences under sections 1, 4(2), 17, 27, 31, 33, 37, 47, 67 [F17367A(6) and (7)](including the last two subsections as applied by section 67B(4)), 67B], 77, 169, 174(3) and (4) and 177, and
  - (ii) an offence under section 164(6) consisting of a contravention of subsection (3) or (4) of that section,
- (b) offences under section 115 of the <sup>M48</sup>Road Traffic Regulation Act 1984 of which the offenders have been convicted on indictment in Scotland,
- (c) offences committed in Scotland under the provisions of that Act down to the end of Part IX or regulations made under those provisions, being offences of

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which the offenders have been convicted otherwise than on indictment, except offences under—

- (i) sections 28(3), 29(3), 47, 104(5) and (6), 105(5), 108(2) and (3),
- (ii) the provisions of subsections (2) and (3) of section 108 as modified by subsections (2) and (3) of section 109, and
- (iii) Schedule 12 (other than paragraph 3(5)),
- (d) offences committed in Scotland under this Act.

#### Textual Amendments

**F173** Words inserted (*prosp.*) by Road Traffic (Consequential Provisions) Act 1988 (c. 54, SIF 107:1), ss. 4, 8(3)(c), **Sch. 2 Pt. III para. 29**

#### Marginal Citations

**M47** 1988 c. 52.

**M48** 1984 c. 27.

## 96 Meaning of “offence involving obligatory endorsement”. **E+W+S**

For the purposes of this Act, an offence involves obligatory endorsement if it is an offence under a provision of the Traffic Acts specified in column 1 of Part I of Schedule 2 to this Act or an offence specified in column 1 of Part II of that Schedule and either—

- (a) the word “obligatory” (without qualification) appears in column 6 (in the case of Part I) or column 3 (in the case of Part II) against the offence, or
- (b) that word appears there qualified by conditions relating to the offence which are satisfied.

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

**C66** S. 96: power to exclude or modify conferred (1.7.1992) by Road Traffic Act 1988 (c. 52, SIF 107:1), s. **193A(2)(b)** (which was inserted (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), s. **46(2)**; S.I. 1992/1286, art. 2, **Sch.**).

## 97 Meaning of “offence involving obligatory disqualification” and “offence involving discretionary disqualification”. **E+W+S**

(1) For the purposes of this Act, an offence involves obligatory disqualification if it is an offence under a provision of the Traffic Acts specified in column 1 of Part I of Schedule 2 to this Act or an offence specified in column 1 of Part II of that Schedule and either—

- (a) the word “obligatory” (without qualification) appears in column 5 (in the case of Part I) or column 2 (in the case of Part II) against the offence, or
- (b) that word appears there qualified by conditions or circumstances relating to the offence which are satisfied or obtain.

(2) For the purposes of this Act, an offence involves discretionary disqualification if it is an offence under a provision of the Traffic Acts specified in column 1 of Part I of Schedule 2 to this Act or an offence specified in column 1 of Part II of that Schedule and either—

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- (a) the word “discretionary” (without qualification) appears in column 5 (in the case of Part I) or column 2 (in the case of Part II) against the offence, or
- (b) that word appears there qualified by conditions or circumstances relating to the offence which are satisfied or obtain.

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

C67 S. 97: power to exclude or modify conferred (1.7.1992) by Road Traffic Act 1988 (c. 52, SIF 107:1), s. 193A(2)(b) (which was inserted (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), s. 46(2); S.I. 1992/1286, art. 2, Sch.).

**98 General interpretation. E+W+S**

(1) In this Act—

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

“drive” has the same meaning as in the <sup>M49</sup>Road Traffic Act 1988,

“licence” means a licence to drive a motor vehicle granted under Part III of that Act <sup>F174</sup> . . . ,

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

“the provisions connected with the licensing of drivers” means sections 7, 8, 22, 25 to 29, 31, 32, 34 to 48, [<sup>F175</sup>91A, 91B,] 96 and 97 of this Act,

“road”—

- (a) in relation to England and Wales, means any highway and any other road to which the public has access, and includes bridges over which a road passes, and
- (b) in relation to Scotland, [<sup>F176</sup>means any road within the meaning of the Roads (Scotland) Act 1984 and any other way to which the public has access, and includes bridges over which a road passes,],

“the Road Traffic Acts” means the <sup>M50</sup>Road Traffic Act 1988, the Road Traffic (Consequential Provisions) Act 1988 (so far as it reproduces the effect of provisions repealed by that Act) and this Act, and

“the Traffic Acts” means the Road Traffic Acts and the <sup>M51</sup>Road Traffic Regulation Act 1984.

[<sup>F177</sup>and “Community licence”, “counterpart” and “EEA State” have the same meanings as in Part III of the Road Traffic Act 1988]

(2) Sections 185 and 186 of the Road Traffic Act 1988 (meaning of “motor vehicle” and other expressions relating to vehicles) apply for the purposes of this Act as they apply for the purposes of that [<sup>F178</sup>Act].

(3) In the Schedules to this Act—

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

“RTA” is used as an abbreviation for the Road Traffic Act 1988 [<sup>F179</sup>or, if followed by “1989”, the Road Traffic (Driver Licensing and Information Systems) Act 1989].

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

#### Textual Amendments

- F174** S. 98(1): words in definition of "licence" repealed (1.1.1997) by S.I. 1996/1974, reg. 3, **Sch. 2, para. 6(a)(i)**
- F175** S. 98(1): words in definition of "the provisions connected with the licensing of drivers" substituted (1.1.1997) by S.I. 1996/1974, reg. 3, **Sch. 2 para. 6(a)(ii)**
- F176** Words in s. 98(1) substituted (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), s. 48, **Sch. 4 para. 111(1)**; S.I. 1992/1286, art. 2, **Sch.**
- F177** S. 98(1): definition inserted (1.1.1997) by S.I. 1996/1974, reg. 3, **Sch. 2 para. 6(b)**
- F178** Word in s. 98(2) added (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), s. 48, **Sch. 4 para. 111(2)**; S.I. 1992/1286, art. 2, **Sch.**
- F179** Words inserted by Road Traffic (Driver Licensing and Information Systems) Act 1989 (c. 22, SIF 107:1), s. 7, **Sch. 3 para. 26**

#### Marginal Citations

- M49** 1988 c. 52.  
**M50** 1988 c. 54.  
**M51** 1984 c. 27.

## 99 Short title, commencement and extent. **E+W+S**

- (1) This Act may be cited as the Road Traffic Offenders Act 1988.
- (2) This Act, except so far as it may be brought into force under subsection (3) or (5) below, shall come into force at the end of the period of six months beginning with the day on which it is passed.
- (3) The provisions mentioned in subsection (4) below, so far as they relate to Scotland, shall come into force on such day or days as the Secretary of State may by order made by statutory instrument appoint.
- (4) Those provisions are—  
section 27(4),  
section 30, except so far as relating to sections 75 to 77, and  
Part III, except sections 51, 52(1) to (3), 53, 62 to 78, 80, 81 and 83 to 90.
- (5) Section 59 of this Act shall come into force on such day or days as the Secretary of State may by order made by statutory instrument appoint.
- (6) An order under subsection (3) or (5) above may contain such transitional provisions and savings (whether or not involving the modification of any provisions contained in an Act or in subordinate legislation (within the meaning of the <sup>M52</sup>Interpretation Act 1978)) as appear to the Secretary of State necessary or expedient in connection with the provisions brought (wholly or partly) into force by the order, and different days may be appointed for different purposes.
- (7) This Act, except as provided by section 93, does not extend to Northern Ireland.

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

**C68** Power of appointment conferred by s. 99(3)(5) not yet exercised

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**Marginal Citations**

**M52** 1978 c. 30.

**Status:**

Point in time view as at 18/03/1997. This version of this Act contains provisions that are prospective.

**Changes to legislation:**

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