



Road Traffic Offenders Act 1988

1988 CHAPTER 53

PART II

SENTENCE

General

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

(1) Notwithstanding anything in [^{F1}section 14(3) of the Powers of Criminal Courts (Sentencing) Act 2000] (conviction of offender ^{F2} . . . 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—

^{F3}(a)

(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 [^{F4}, 44 or 44A] 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 [^{F5}the counterpart of] any licence held by him [^{F6}or on his driving record] ,

is to be taken into account, notwithstanding anything in [^{F7}section 14(1) of the Powers of Criminal Courts (Sentencing) Act 2000] (conviction of offender ^{F8} . . . 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—

Status: Point in time view as at 13/04/2015.

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- (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 [^{F9}section 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 [^{F10}, 45 and 45A] of this Act, he shall be treated as if he had been convicted of an offence of the kind in question and [^{F11}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

- F1** Words in s. 46(1) substituted (25.8.2000) by 2000 c. 6, ss. 165(1), 168(1), **Sch. 9 para. 123(2)**
- F2** Words in s. 46(1) repealed (E.W.) (1.10.1992) by Criminal Justice Act 1991 (c. 53, 39:1), ss. 100, 101(2), **Sch. 11 para. 38(1), Sch. 13**; S.I. 1992/333, art. 2(2), **Sch. 2**
- F3** S. 46(1)(a) repealed (4.4.2005) by Criminal Justice Act 2003 (c. 44), s. 336(3)(4), **Sch. 32 para. 54, Sch. 37 Pt. 7**; S.I. 2005/950, art. 2(1), **Sch. 1 paras. 42(22), 44(4)(h)** (with **Sch. 2**) (as explained (29.7.2005) by S.I. 2005/2122, art. 2; and as amended: (14.7.2008) by 2008 c. 4, **Sch. 26 para. 78, Sch. 28 Pt. 2**; S.I. 2008/1586, **Sch. 1 paras. 48(s), 50(2)(d)**; (30.11.2009) by S.I. 2009/3111, art. 2; (3.12.2012) by S.I. 2012/2905, art. 4; (3.12.2012) by 2012 c. 10, **Sch. 14 para. 17**; S.I. 2012/2906, art. 2(1))
- F4** Words in s. 46(1) substituted (1.4.2009) by Road Safety Act 2006 (c. 49), s. 61(1)(10), **Sch. 2 para. 11(2)**; S.I. 2008/3164, art. 4(b)
- F5** Words inserted by S.I. 1990/144, regs. 2(2), 3, **Sch. 2 para. 12**
- F6** Words in s. 46(2)(b) inserted (1.4.2009) by Road Safety Act 2006 (c. 49), s. 61(1)(10), **Sch. 2 para. 11(3)**; S.I. 2008/3164, art. 4(b)
- F7** Words in s. 46(2) substituted (25.8.2000) by 2000 c. 6, ss. 165(1), 168(1), **Sch. 9 para. 123(3)**
- F8** 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**
- F9** Words in s. 46(3)(b) substituted (1.4.1996) by 1995 c. 40, s. 5, **Sch. 4 para. 71(7)(a)**
- F10** Words in s. 46(3) substituted (1.4.2009) by Road Safety Act 2006 (c. 49), s. 61(1)(10), **Sch. 2 para. 11(4)**; S.I. 2008/3164, art. 4(b)
- F11** 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)

- C1** 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.**).

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

- (1) Notwithstanding anything in section 13(3) of the ^{M1}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—

^{F3}(a)

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(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 [F⁴, 44 or 44A] 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 [F²³the counterpart of] any licence held by him [F⁶or on his driving record]

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 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 [F^{24F25}... 246(2) or (3) (absolute discharge) of the Criminal Procedure (Scotland) Act 1995]

then, for the purposes of sections 34, 35, 36, 44[F¹⁰, 45 and 45A] and 45 of this Act, he shall be treated as if he had been convicted of an offence of the kind in question and [F²⁶section 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

- F3** S. 46(1)(a) repealed (4.4.2005) by Criminal Justice Act 2003 (c. 44), s. 336(3)(4), Sch. 32 para. 54, Sch. 37 Pt. 7; S.I. 2005/950, art. 2(1), Sch. 1 paras. 42(22), 44(4)(h) (with Sch. 2) (as explained (29.7.2005) by S.I. 2005/2122, art. 2; and as amended: (14.7.2008) by 2008 c. 4, Sch. 26 para. 78, Sch. 28 Pt. 2; S.I. 2008/1586, Sch. 1 paras. 48(s), 50(2)(d); (30.11.2009) by S.I. 2009/3111, art. 2; (3.12.2012) by S.I. 2012/2905, art. 4; (3.12.2012) by 2012 c. 10, Sch. 14 para. 17; S.I. 2012/2906, art. 2(1))
- F4** Words in s. 46(1) substituted (1.4.2009) by Road Safety Act 2006 (c. 49), s. 61(1)(10), Sch. 2 para. 11(2); S.I. 2008/3164, art. 4(b)
- F6** Words in s. 46(2)(b) inserted (1.4.2009) by Road Safety Act 2006 (c. 49), s. 61(1)(10), Sch. 2 para. 11(3); S.I. 2008/3164, art. 4(b)
- F10** Words in s. 46(3) substituted (1.4.2009) by Road Safety Act 2006 (c. 49), s. 61(1)(10), Sch. 2 para. 11(4); S.I. 2008/3164, art. 4(b)
- F23** Words inserted by S.I. 1990/144, regs. 2(2), 3, Sch. 2 para. 12
- F24** Words in s. 46(3)(b) substituted (1.4.1996) by 1995 c. 40, s. 5, Sch. 4 para. 71(7)(a)
- F25** Words in s. 46(3)(b) repealed (1.2.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), s. 206(1), sch. 2 para. 37; S.S.I. 2010/413, art. 2, sch. (with art. 3(1))
- F26** Words in s. 46(7) substituted (1.4.1996) by 1995 c. 40, s. 5, Sch. 4 para. 71(7)

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Modifications etc. (not altering text)

- C8** 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

- M1** 1973 c. 62.

47 Supplementary provisions as to disqualifications and endorsements.

- (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 [^{F12}the counterpart of] any licence held by a person it may [^{F13}, 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 [^{F14}licence and its counterpart, on their] being produced to the court, to the Secretary of State; and if the court orders the endorsement but does not send the licence [^{F12}and its counterpart] to the Secretary of State it must send him notice of the endorsement.
- [^{F15}(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).]
- (3) Where on an appeal against [^{F16}an order for the endorsement of a licence [^{F17}or a driving record] or the disqualification of a person] the appeal is allowed, the court by which the appeal is allowed must send notice of that fact to the Secretary of State.
- [^{F18}(3A) On receiving such a notice in relation to a person who is not the holder of a licence, the Secretary of State must make any necessary adjustments to the endorsements on the person's driving record to reflect the outcome of the appeal.]
- (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 [^{F19}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

- F12** Words inserted by S.I. 1990/144, regs. 2(2), 3, Sch. 2 para. 13(a)(i)(ii)(iii)
- F13** 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.
- F14** Words substituted by S.I. 1990/144, regs. 2(2), 3, Sch. 2 para. 13(a)(i)(ii)(iii)
- F15** 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)
- F16** 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.
- F17** Words in s. 47(3) inserted (1.4.2009) by Road Safety Act 2006 (c. 49), s. 61(1)(10), Sch. 2 para. 12(2); S.I. 2008/3164, art. 4(b)

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- F18** S. 47(3A) inserted (1.4.2009) by Road Safety Act 2006 (c. 49), s. 61(1)(10), **Sch. 2 para. 12(3)**; S.I. 2008/3164, art. 4(b)
- F19** Words inserted by S.I. 1990/144, regs. 2(2), 3, **Sch. 2 para. 13(b)**

Modifications etc. (not altering text)

- C2** 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)**
- C3** S. 47(2) applied with modifications by S.I. 1987/1378, **reg. 25(3)** (as amended by S.I. 1990/842, **reg. 9**)
- C4** S. 47(2) modified (temp.) (13.4.2015) by Coroners and Justice Act 2009 (c. 25), s. 182(5), Sch. 22 paras. 30, **33** (with s. 180); S.I. 2015/819, art. 2(c)
- C5** 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)**)
- C6** 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)**)

^{F20}[48 Exemption from disqualification and endorsement for certain construction and use offences.

- (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—
- order him to be disqualified, or
 - order any particulars or penalty points to be endorsed on the counterpart of any licence held by him [^{F21}or on his driving record] ,
- if he proves that he did not know, and had no reasonable cause to suspect, that the use of the vehicle involved a danger of injury to any person.
- (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—
- order him to be disqualified, or
 - order any particulars or penalty points to be endorsed on the counterpart of any licence held by him [^{F21}or on his driving record] ,
- if he proves that he did not know, and had no reasonable cause to suspect, that the facts of the case were such that the offence would be committed.
- (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

- F20** 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.
- F21** Words in s. 48(1)(b)(2)(b) inserted (1.4.2009) by Road Safety Act 2006 (c. 49), s. 61(1)(10), **Sch. 2 para. 13**; S.I. 2008/3164, art. 4(b)

Status: Point in time view as at 13/04/2015.

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Modifications etc. (not altering text)

C7 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.

(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.

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, ^{F22}...

^{F22}(b)

Textual Amendments

F22 S. 50(b) and word repealed (10.12.2007) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(Powers of District and JP Courts\) Order 2007 \(S.I. 2007/3480\)](#), arts. 1(1), [2\(1\)\(c\)](#)

Status:

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Changes to legislation:

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