



# Road Traffic Act 1991

## 1991 CHAPTER 40

### PART I

#### GENERAL

#### *Penalties*

#### **26 Amendment of Schedule 2 to the Road Traffic Offenders Act 1988.**

Schedule 2 to this Act, which amends Schedule 2 to the <sup>M1</sup>Road Traffic Offenders Act 1988 (prosecution and punishment of offences), shall have effect.

#### **Commencement Information**

**II** S. 26 wholly in force at 1.7.1992 see s. 84 and S.I. 1992/1286, art. 2, Sch.

#### **Marginal Citations**

**M1** 1988 c. 53.

#### **27 Penalty points to be attributed to offences.**

For section 28 of the <sup>M2</sup>Road Traffic Offenders Act 1988 there shall be substituted—

#### **“28 Penalty points to be attributed to an offence.**

- (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—
- 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
  - where a range of numbers is shown, a number within that range.

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- (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—
  - (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.”

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**Commencement Information**

**I2** S. 27 wholly in force at 1.7.1992 see s. 84 and S.I. 1992/1286, art. 2, Sch.

**Marginal Citations**

**M2** 1988 c. 53.

**28 Penalty points to be taken into account on conviction.**

For section 29 of the <sup>M3</sup>Road Traffic Offenders Act 1988 there shall be substituted—

**“29 Penalty points to be taken into account on conviction.**

- (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.”

**Commencement Information**

**I3** S. 28 wholly in force at 1.7.1992 see s. 84 and S.I. 1992/1286, art. 2, Sch.

**Marginal Citations**

**M3** 1988 c. 53.

**29 Disqualification for certain offences.**

- (1) Section 34 of the Road Traffic Offenders Act 1988 (disqualification for certain offences) shall be amended as follows.
- (2) For subsection (2) there shall be substituted—
- “(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,

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

(3) In subsection (3) before paragraph (a) there shall be inserted—

“(aa) section 3A (causing death by careless driving when under the influence of drink or drugs),”.

(4) For subsection (4) there shall be substituted—

“(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.”

#### Commencement Information

**I4** S. 29 wholly in force at 1.7.1992 see s. 84 and S.I. 1992/1286, art. 2, Sch.

### 30 Courses for drink-drive offenders.

After section 34 of the <sup>M4</sup>Road Traffic Offenders Act 1988 there shall be inserted—

#### “34A Reduced disqualification period for attendance on courses.

(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

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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.
- (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.

### **34B Certificates of completion of courses.**

- (1) An offender shall be regarded for the purposes of section 34A of this Act as having completed a course satisfactorily if (and only if) a certificate that he has done so is received by the 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.

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- (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.
- (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.

### **34C Provisions supplementary to sections 34A and 34B.**

- (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;

“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—

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- (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.”

#### Commencement Information

**I5** S. 30 wholly in force at 1.7.1992 see s. 84 and [S.I. 1992/1286, art. 2, Sch.](#)

#### Marginal Citations

**M4** [1988 c. 53.](#)

### 31 Experimental period for section 30.

- (1) Subject to the following provisions, no order shall be made under section 34A of the <sup>M5</sup>Road Traffic Offenders Act 1988 after the end of 1997 or such later time as may be specified in an order made by the Secretary of State.
- (2) At any time before the restriction imposed by subsection (1) above has taken effect, the Secretary of State may by order provide that it shall not do so.
- (3) In this section “the experimental period” means the period beginning when section 30 above comes into force and ending—
  - (a) when the restriction imposed by subsection (1) above takes effect, or
  - (b) if the Secretary of State makes an order under subsection (2) above, on a date specified in the order (being a date falling before the time when the restriction imposed by subsection (1) above would otherwise have taken effect).
- (4) During the experimental period—
  - (a) no order shall be made under section 34A of the <sup>M6</sup>Road Traffic Offenders Act 1988 by virtue of a person's conviction under section 3A of the Road Traffic Act 1988, and
  - (b) no order shall be made under section 34A of the Road Traffic Offenders Act 1988 except by a magistrates' court acting for a petty sessions area (or in Scotland, a sheriff court for a district or a stipendiary magistrate for a commission area) which is for the time being designated for the purposes of this section.

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- (5) In relation to orders made under section 34A during the experimental period, that section shall have effect with the omission of subsection (6) and section 34B shall have effect as if references to the supervising court were references to the court which made the order.
- (6) The power to designate an area or district for the purposes of this section shall be exercisable by the Secretary of State by order, and includes power to revoke any designation previously made.
- (7) An order under subsection (6) above shall specify the period for which an area or district is designated, and may—
- (a) specify different periods for different areas or districts, and
  - (b) extend or abridge any period previously specified.
- (8) The power to make an order under subsection (1) above shall not be exercisable after the end of 1997, and no more than one order may be made under that subsection.
- (9) Any power of the Secretary of State to make orders under this section shall be exercisable by statutory instrument, and—
- (a) no order shall be made under subsection (1) or (2) above unless a draft of it has been laid before and approved by resolution of each House of Parliament, and
  - (b) any statutory instrument containing an order under subsection (6) above shall be subject to annulment in pursuance of a resolution of either House.

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

**C1** S. 31(1) restricted (31.12.1999) by [S.I. 1999/3130, art. 2](#)

**C2** S. 31(6): transfer of functions (1.7.1999) by [S.I. 1999/672, art. 2, Sch. 1](#)

#### Commencement Information

**I6** S. 31 wholly in force at 1.7.1992 see [s. 84](#) and [S.I. 1992/1286, art. 2, Sch.](#)

#### Marginal Citations

**M5** 1988 c. 53.

**M6** 1988 c. 52.

## 32 Disqualification until test is passed.

For section 36 of the <sup>M7</sup>Road Traffic Offenders Act 1988 there shall be substituted—

### “36 Disqualification until test is passed.

- (1) Where this subsection applies to a person the court must order him to be disqualified until he passes the appropriate driving test.
- (2) Subsection (1) above applies to a person who is disqualified under section 34 of this Act on conviction of—
  - (a) manslaughter, or in Scotland culpable homicide, by the driver of a motor vehicle, or
  - (b) an offence under section 1 (causing death by dangerous driving) or section 2 (dangerous driving) of the Road Traffic Act 1988.



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- (3) Subsection (1) above also applies—
- (a) to a person who is disqualified under section 34 or 35 of this Act in such circumstances or for such period as the Secretary of State may by order prescribe, or
  - (b) to such other persons convicted of such offences involving obligatory endorsement as may be so prescribed.
- (4) Where a person to whom subsection (1) above does not apply is convicted of an offence involving obligatory endorsement, the court may order him to be disqualified until he passes the appropriate driving test (whether or not he has previously passed any test).
- (5) In this section—
- “appropriate driving test” means—
- (a) an extended driving test, where a person is convicted of an offence involving obligatory disqualification or is disqualified under section 35 of this Act,
  - (b) a test of competence to drive, other than an extended driving test, in any other case,
- “extended driving test” means a test of competence to drive prescribed for the purposes of this section, and
- “test of competence to drive” means a test prescribed by virtue of section 89(3) of the Road Traffic Act 1988.
- (6) In determining whether to make an order under subsection (4) above, the court shall have regard to the safety of road users.
- (7) Where a person is disqualified until he passes the extended driving test—
- (a) any earlier order under this section shall cease to have effect, and
  - (b) a court shall not make a further order under this section while he is so disqualified.
- (8) Subject to subsection (9) below, a disqualification by virtue of an order under this section shall be deemed to have expired on production to the Secretary of State of evidence, in such form as may be prescribed by regulations under section 105 of the 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 member State, Gibraltar or a designated country or territory (as defined by section 89(11) of the Road Traffic Act 1988), or

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(b) for the purposes of obtaining a British Forces licence (as defined by section 88(8) of that Act);

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.

(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.”

#### Commencement Information

**I7** S. 32 wholly in force at 1.7.1992 see s. 84 and S.I. 1992/1286, art. 2, Sch.

#### Marginal Citations

**M7** 1988 c. 53.

### 33 Short periods of disqualification.

In section 37 of the <sup>M8</sup>Road Traffic Offenders Act 1988 (effect of order of disqualification) after subsection (1) there shall be inserted—

“(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.”

#### Commencement Information

**I8** S. 33 wholly in force at 1.7.1992 see s. 84 and S.I. 1992/1286, art. 2, Sch.

#### Marginal Citations

**M8** 1988 c. 53.

### 34 Conditional offer of fixed penalty.

For sections 75 to 77 of the <sup>M9</sup>Road Traffic Offenders Act 1988 (which relate to Scotland only) there shall be substituted—

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*“ Conditional offer of fixed penalty*

**75 Issue of conditional offer.**

- (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,
  - (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

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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.

## **76 Effect of offer and payment of penalty.**

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

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- (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.

#### **77 Endorsement where penalty paid.**

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

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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,

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are to be read as references to the endorsement itself.

- (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.”

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**Commencement Information**

**I9** S. 34 wholly in force at 1.7.1992 see s. 84 and S.I. 1992/1286, art. 2, **Sch.**

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**Marginal Citations**

**M9** 1988 c. 53.

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