

2023 No. 209

DEFENCE

**The Armed Forces (Driving Disqualification Orders)
Regulations 2023**

Made - - - - *23rd February 2023*

Laid before Parliament *1st March 2023*

Coming into force - - *1st April 2023*

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 163, 177M and 288 of the Armed Forces Act 2006(a).

Citation and commencement

1.—(1) These Regulations may be cited as the Armed Forces (Driving Disqualification Orders) Regulations 2023.

(2) These Regulations come into force on 1st April 2023.

Extent

2. These Regulations extend to England and Wales, Scotland, Northern Ireland, the Isle of Man and the British Overseas Territories (except Gibraltar).

PART 1

DRIVING DISQUALIFICATION ORDERS

Application of this Part

3. This Part applies where a driving disqualification order is made in respect of an offender under the Armed Forces Act 2006.

Interpretation of this Part

4. In this Part—

“the Act” means the Armed Forces Act 2006;

“court” means—

(a) the Court Martial;

(b) the Service Civilian Court;

(a) 2006 c. 52; section 177M was inserted by the Armed Forces Act 2021 (c. 35).

“driving licence” means a licence to drive a motor vehicle granted under Part 3 of the Road Traffic Act 1988(a) or a Northern Ireland licence (within the meaning of Part 3 of that Act);

“extension period” means an extension period added to the disqualification period pursuant to section 177J of the Armed Forces Act 2006.

Effect of driving disqualification order

5.—(1) Where a driving disqualification order(b) is made in respect of an offender who is the holder of a driving licence, the driving licence must be treated as being revoked with effect from the beginning of the disqualification period.

(2) Where the disqualification is for a fixed period shorter than 56 days (disregarding any extension period), paragraph (1) does not prevent the driving licence from again having effect at the end of the disqualification period (including any extension period).

(3) Where the offender appeals against the order and the disqualification is suspended under regulation 6 or 7, the disqualification period must be treated for the purposes of paragraph (1) as beginning on the day on which the disqualification ceases to be suspended.

Power of sentencing court to suspend disqualification pending appeal

6.—(1) A court that makes a driving disqualification order may suspend the disqualification pending an appeal against the order.

(2) Where the court exercises its power under paragraph (1), it must send notice of the suspension to the Secretary of State in accordance with rule 108B of the Armed Forces (Service Civilian Court) Rules 2009(c) or rule 151C of the Armed Forces (Court Martial) Rules 2009(d), as appropriate.

Power of appellate court to suspend disqualification pending appeal

7.—(1) Where an offender subject to a driving disqualification order appeals or applies for leave to appeal to the Court Martial against their conviction or sentence under section 285 (right of appeal from SCC) of the Act, the Court Martial may suspend the disqualification.

(2) Where an offender subject to a driving disqualification order appeals or applies for leave to appeal to the Court Martial Appeal Court against their conviction or sentence under sections 8 (right of appeal) and 9 (application for leave to appeal) of the Court Martial Appeals Act 1968(e), the Court Martial Appeal Court may suspend the disqualification.

(3) Where an offender subject to a driving disqualification order appeals or applies for leave to appeal to the Supreme Court under sections 39 (right of appeal)(f) and 40 (application for leave to appeal)(g) of the Court Martial Appeals Act 1968, the Court Martial Appeal Court may suspend the disqualification.

(4) Any power of the Court Martial or Court Martial Appeal Court under paragraphs (1) to (3) to suspend the disqualification of any offender is a power to do so on such terms as it considers appropriate.

(a) 1988 c. 52, to which there are amendments not relevant to these Regulations.

(b) A “driving disqualification order” is an order of the type defined by section 177G of the Armed Forces Act 2006 (c. 52); section 177G was inserted by section 15(3) of the Armed Forces Act 2021 (c. 35).

(c) S.I. 2009/1209, inserted by regulation 14 of these Regulations.

(d) S.I. 2009/2041, inserted by regulation 17 of these Regulations.

(e) 1968 c. 20, section 8 was amended by section 17(2)(a) of the Armed Forces Act 1996 (c. 46) and paragraph 7 of Schedule 8 to the Armed Forces Act 2006 (c. 52); there are other amendments not relevant to these Regulations.

(f) Section 39 was amended by paragraphs 17(3)(a) and (b) of Schedule 9 to the Constitutional Reform Act 2005 (c. 4), paragraph 42 of Schedule 8 to the Armed Forces Act 2006, article 9(2) of the Court Martial (Prosecution Appeals) Order (S.I. 2009/2044) and article 15(2) and (3) of the Armed Forces (Retrial for Serious Offences) Order (S.I. 2013/1852).

(g) Section 40 was amended by paragraphs 17(3)(a) and (b) of Schedule 9 to the Constitutional Reform Act 2005, section 91 of the Courts Act 2003 (c. 39) and article 15(4) of the Armed Forces (Retrial for Serious Offences) Order (S.I. 2013/1852).

(5) Where, by virtue of this regulation, the Court Martial or Court Martial Appeal Court suspends the disqualification of any offender, it must send notice of the suspension to the Secretary of State.

Removal of disqualification

8.—(1) Subject to the provisions of this regulation, an offender subject to a driving disqualification order may apply to the court which imposed the order to have it removed.

(2) On any such application the court may either by order remove the disqualification as from such date it specifies in the order or refuse the application.

(3) In making a decision under paragraph (2), the court may take into account the following factors—

- (a) the character of the offender;
- (b) the conduct of the offender since the order was imposed;
- (c) the nature of the offence;
- (d) any other circumstances of the case.

(4) No application under paragraph (1) may be made before the expiry of the relevant period.

(5) The relevant period for the purposes of paragraph (4) is—

- (a) two years, if the discretionary disqualification period is less than four years;
- (b) half of the discretionary disqualification period, if the discretionary disqualification period is less than 10 years but not less than four years;
- (c) five years in any other case.

(6) In determining the expiry of the relevant period in paragraph (4), any time after conviction during which the driving disqualification order was suspended or the offender was not disqualified must be disregarded.

(7) Where an application under paragraph (1) is refused, no further application under that paragraph may be made within three months of the date of the refusal.

(8) If under this regulation a court orders a driving disqualification order to be removed, the court—

- (a) must send notice of the order to the Secretary of State in accordance with rule 108B of the Armed Forces (Service Civilian Court) Rules 2009 or rule 151C of the Armed Forces (Court Martial) Rules 2009, as appropriate,
- (b) may in any case order the applicant to pay the whole or any part of the costs of the application.

Rule for determining end of disqualification period

9. In determining the expiry of the disqualification period, any time after conviction during which the driving disqualification order was suspended, or the offender was not disqualified must be disregarded.

Supplementary provisions as to disqualification

10.—(1) Where a court orders an offender to be disqualified for a period of 56 days or more (disregarding any extension period) it must send any driving licence of that offender that is produced to the court to the Secretary of State.

(2) Where on an appeal against 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.

Exemption from disqualification for certain construction and use offences

11.—(1) Where an offender is convicted of an offence under section 42 of the Act as respects which the corresponding offence under the law of England and Wales is an offence under section 40A of the Road Traffic Act 1988 (using vehicle in dangerous condition etc) the court must not impose a driving disqualification order if the offender proves that they 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 an offender is convicted of an offence under section 42 of the Act as respects which the corresponding offence under the law of England and Wales is 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 impose a driving disqualification order if the offender proves that they did not know, and had no reasonable cause to suspect, that the facts of the case were such that an offence would be committed.

PART 2

AMENDMENT OF SERVICE COURT RULES

CHAPTER 1

Amendment of the Armed Forces (Service Civilian Court) Rules 2009

Amendment of the Armed Forces (Service Civilian Court) Rules 2009

12. The Armed Forces (Service Civilian Court) Rules 2009 are amended as follows.

Proceedings in absence of defendant

13. After rule 19(2) (proceedings in absence of defendant etc), insert—

“(3) The court may not impose a driving disqualification order in the absence of an offender, unless the court is satisfied that the offender was informed prior to the hearing that the court was considering disqualification.”

Ancillary Proceedings

14. After rule 108 (certification of contempt of court), insert—

“Chapter 3

Driving Disqualification Orders

Application to remove a disqualification

108A.—(1) This rule applies where under regulation 8 of the Armed Forces (Driving Disqualification Orders) Regulations 2023 (the “Driving Disqualification Order Regulations”), on application by the offender, the court can remove a driving disqualification order.

(2) An offender who wants the court to exercise that power must—

- (a) apply in writing, no earlier than the date prescribed by regulation 8(4) of the Driving Disqualification Order Regulations,
- (b) serve the application on the court administration officer,
- (c) in the application set out—
 - (i) the date on which the driving disqualification order was made and the disqualification period,
 - (ii) the offence for which it was imposed, and
 - (iii) the reasons the offender seeks removal of the driving disqualification order.

- (3) The court administration officer must serve a copy of the application on the Director.
- (4) A hearing must be held to determine the application.

Information to be supplied on order for disqualification, etc.

108B.—(1) This rule applies where the court—

- (a) disqualifies the offender from driving, or
- (b) suspends or removes a driving disqualification order.

(2) The court administration officer must, as soon as reasonably practicable, serve on the Secretary of State notice that includes details of—

- (a) where paragraph (1)(a) applies—
 - (i) the date on which the driving disqualification order was made and the disqualification period;
 - (ii) the power exercised by the court;
- (b) where paragraph (1)(b) applies—
 - (i) the date on which the driving disqualification order was made and the disqualification period;
 - (ii) the date and terms of the order for its suspension or removal;
 - (iii) the power exercised by the court;
 - (iv) where the court suspends the disqualification pending appeal, the court to which the offender has appealed.”

CHAPTER 2

Amendment of the Armed Forces (Court Martial) Rules 2009

Amendment of the Armed Forces (Court Martial) Rules 2009

15. The Armed Forces (Court Martial) Rules 2009 are amended as follows.

Proceedings in absence of defendant

16. After rule 19(2) (proceedings in absence of defendant etc), insert—

“(3) The court may not impose a driving disqualification order in the absence of an offender, unless the court is satisfied that the offender was informed prior to the hearing that the court was considering disqualification.”

Ancillary Proceedings

17. After rule 151A (certification of failure to comply with production order), insert—

“Chapter 3

Driving Disqualification Orders

Application to remove a disqualification

151B.—(1) This rule applies where under regulation 8 of the Armed Forces (Driving Disqualification Orders) Regulations 2023 (the “Driving Disqualification Order Regulations”), on application by the offender, the court can remove a driving disqualification order.

(2) An offender who wants the court to exercise that power must—

- (a) apply in writing, no earlier than the date prescribed by regulation 8(4) of the Driving Disqualification Order Regulations,

- (b) serve the application on the court administration officer,
- (c) in the application set out—
 - (i) the date on which the driving disqualification order was made and the disqualification period,
 - (ii) the offence for which it was imposed, and
 - (iii) the reasons the offender seeks removal of the driving disqualification order.
- (3) The court administration officer must serve a copy of the application on the Director.
- (4) A hearing must be held to determine the application.

Information to be supplied on order for disqualification, etc.

- 151C.**—(1) This rule applies where the court—
- (a) disqualifies the offender from driving, or
 - (b) suspends or removes a driving disqualification order.
- (2) The court administration officer must, as soon as reasonably practicable, serve on the Secretary of State notice that includes details of—
- (a) where paragraph (1)(a) applies—
 - (i) the date on which the driving disqualification order was made and the disqualification period;
 - (ii) the power exercised by the court;
 - (b) where paragraph (1)(b) applies—
 - (i) the date on which the driving disqualification order was made and the disqualification period;
 - (ii) the date and terms of the order for its suspension or removal;
 - (iii) the power exercised by the court;
 - (iv) where the court suspends the disqualification pending appeal, the court to which the offender has appealed.”

Andrew Murrison
Parliamentary Under Secretary of State
Ministry of Defence

23rd February 2023

EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 15 of the Armed Forces Act 2021 (c. 35) amended the Armed Forces Act 2006 (c. 52) so as to extend the punishments available to the Court Martial and Service Civilian Court (“the service courts”) to enable those courts to disqualify an offender from driving. Pursuant to section 177M of the Armed Forces Act 2006 as amended, these Regulations make provision equivalent to sections 37, 39, 40, 42, 43, 47, and 48 of the Road Traffic Offenders Act 1988 (c. 53) (“RTOA 1988”). These Regulations also make consequential amendments to the rules of court for each of the service courts, in order to enable them to implement the substantive Regulations.

Part 1 of these Regulations sets out substantive provisions equivalent to the relevant provisions of RTOA 1988.

Regulation 5 makes provision equivalent to section 37 RTOA 1988: it sets out the effect of a driving disqualification order.

Regulations 6 and 7 allow for a driving disqualification order to be suspended pending appeal. They make provision equivalent to sections 39 and 40 RTOA 1988.

Regulation 8 provides that a driving disqualification order may be removed on the application of the person subject to the order. It is equivalent to section 42 RTOA 1988.

Regulation 9 is equivalent to section 43 RTOA 1988 and sets out the rules for calculating when the period of disqualification comes to an end.

Regulation 10 makes provision equivalent to section 47 RTOA 1988. It provides for the service courts to send the offender's driving licence to the Secretary of State, if the offender is disqualified for more than 56 days. It also requires the service courts to notify the Secretary of State if an appeal against disqualification is allowed.

Regulation 11 is equivalent to section 48 RTOA 1988. It states that driving disqualification orders may not be imposed in relation to two offences under the Road Traffic Act 1988 ("using a vehicle in dangerous condition" and "breach of requirements as to brakes, steering-gear or tyres") where the offender lacks the required degree of knowledge in relation to the relevant offence.

Part 2 makes provision for amendment of the rules of court for each of the service courts, in connection with driving disqualification orders. Chapter 1 deals with amendments to the Armed Forces (Service Civilian Court) Rules 2009 (the "Service Civilian Court rules"). Chapter 2 makes equivalent amendments to the Armed Forces (Court Martial) Rules 2009 (the "Court Martial rules").

Regulation 13 amends rule 19 of the Service Civilian Court rules (proceedings in absence of defendant). New rule 19(3) provides that the Service Civilian Court may not impose a driving disqualification order in the absence of the offender unless the court is satisfied that the offender was informed prior to the hearing that disqualification was contemplated.

Regulation 14 amends Part 15 of the Service Civilian Court rules. Part 15 deals with ancillary proceedings, and regulation 14 adds a new Chapter 3, dealing with driving disqualification orders.

New rule 108A sets out the procedures that apply in relation to an application, under regulation 8 of these Regulations, for removal of a driving disqualification order.

New rule 108B makes provision as to the notification that the court administration officer must give to the Secretary of State in the event of disqualification, suspension of disqualification, or removal of disqualification.

Chapter 2 and regulations 15 to 17 make amendments to the Court Martial rules equivalent to the amendments to the Service Civilian Court rules made by regulations 12 to 14.

A full impact assessment has not been provided for these Regulations as no, or no significant, impact on the private, voluntary or public sector is foreseen.

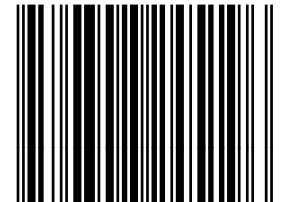
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