

Disqualification from Driving

Road Traffic Offenders (NI) Order 1996:

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

(1A) Where a person is convicted of an offence under Article 172A or 172B of the 1981 Order (aggravated vehicle taking) the fact that he did not drive the vehicle in question at any particular time or at all shall not be regarded as a special reason for the purposes of paragraph (1).

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

(a) the penalty points to be taken into account on that occasion number fewer than 12, or

(b) the offence is not one involving obligatory endorsement,

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

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

(a) Article 14 (causing death, or grievous bodily injury, by careless driving when under the influence of drink or drugs),

(b) Article 15(1) (driving or attempting to drive while unfit),

(c) Article 16(1)(a) (driving or attempting to drive with excess alcohol),

(d) Article 18(7) (failing to provide a specimen), where that is an offence involving obligatory disqualification,

(e) Article 18A(6) (failing to allow a specimen to be subjected to laboratory test) where that is an offence involving obligatory disqualification;

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

This paragraph is subject to Article 96.

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

(a) a person convicted of-

(i) manslaughter, or

(ii) an offence under Article 9 of the Order of 1995 (causing death, or grievous bodily injury, by dangerous driving), or

(iii) an offence under Article 14 of that Order (causing death, or grievous bodily injury, by careless driving when under the influence of drink or drugs), and

(b) a person on whom more than one disqualification for a fixed period of 56 days or more has been imposed within the 3 years immediately preceding the commission of the offence.

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

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

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

Art.40 - (1) Where-

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

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

...

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

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

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

...

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

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

General (English Cases)¹:

<u>R v Tantrum</u> (1989) 11 Cr App R(S) 348 <u>R v McCluskie</u> (1992) 13 Cr App R(S) 334	Extremely long periods of disqualification should be avoided so far as possible.
<u>R v Lobley</u> (1974) 59 Cr App R 63	In determining the length of a period of disqualification, the court should not have regard to the provisions enabling the offender to apply for the restoration of his licence after the relevant period.
<u>R v Weston</u> (1982) 4 Cr App R(S) 51	A sentencer imposing a period of

¹ Sweet & Maxwell, *Current Sentencing Practice*, Part H

<u>R v Hansel</u> (1982) 4 Cr App R(S) 368 <u>R v West</u> (1986) 8 Cr App R(S) 266 <u>R v Gibbons</u> (1987) 9 Cr App R(S) 21 <u>R v Mathews</u> (1987) 9 Cr App R(S) 1	disqualification from driving should have regard to the effect of the disqualification on the offender's prospects of employment.
<u>R v Donnelly</u> (1975) 60 Cr App R 250 <u>Hughes v Challes</u> (1983) 5 Cr App R(S) 374 <u>R v Lazzari</u> (1984) 6 Cr App R(S) 83 <u>R v Peat</u> (1984) 6 Cr App R(S) 311 <u>R v Buckley</u> (1988) 10 Cr App R(S) 477 <u>R v Bannister</u> (1990) 12 Cr App R(S) 314 <u>R v Miller</u> (1994) 15 Cr App R(S) 505	The power to disqualify an offender until he has passed the driving test should not be used punitively; it should be used only where the offender's competence to drive is in doubt.
<u>R v Rowe</u> (23 January 1975)(Unreported)	The power to require an offender to take a driving test before driving again may be used where the nature of the offence suggests that his driving skills may be failing due to age.

'Special Reasons' Not to Disqualify [Article 35(1)] (NI Cases):

<u>R(Magill) v Crossan</u> [1939] NI 106 <u>Kerr v McNeill</u> [1949] NI 19)	'Special reasons' to disqualify for less than 12 months or not at all must relate to the circumstances of the offence, not the offender.
Fleming v Mayne [2000] NIJB 21	1. Offender must prove the facts amounting to 'special reasons' on the balance of probabilities; 2. It will normally be circumstances where there was personal danger to the offender or an emergency which required him to drive; 3. Objective test: whether a sober, reasonable and responsible friend of the offender present at the time would have advised him in the circumstances to drive or not to drive; 4. Even when proved, it merely provides the court with a discretion not to disqualify.
Chief Constable v Cassells [2007] NICA 12	Once the danger has been successfully avoided, the need to continue driving should be reviewed.
PSNI v Mullan [2008] NICA 10	Were there are alternatives to the offender driving which could have been explored and followed?

'Special Reasons' Not to Disqualify (English Cases):

<u>R v Newton</u> [1974] RTR 451	The fact that an offender has satisfied the court of the existence of special reasons does not necessarily mean that he should not be disqualified from driving; the effect of establishing special reasons is merely to release the court from the statutory obligation to disqualify.
<u>Bolliston v Gibbons</u> (1984) 6 Cr App R(S) 134	Where an offender is liable to a minimum of 3 years disqualification by reason of a

² Sweet & Maxwell, *Current Sentencing Practice*, Part H

	previous conviction within 10 years of the commission of the latest offence, the court may have regard to special reasons only relating to the latest offence.
<u>Whittal v Kirby</u> [1947] KB 194	A special reason is an extenuating circumstance directly connected with the commission of the offence.
<u>Holroyd v Berry</u> [1973] RTR 145	Personal hardship arising from disqualification cannot amount to a special reason for not disqualifying.
<u>Delaroy-Hall v Tadman</u> (1969) 53 Cr App R 143	The fact that the offender's blood alcohol level is only just in excess of the permitted level is not capable of being a special reason.
<u>Taylor v Austin</u> [1969] 1 All ER 544	The fact that the alcohol which the offender has consumed did not affect his capacity to drive is not capable of amounting to a special reason.
<u>R v Jackson</u> [1970] 1 QB 647	The fact that the offender's metabolism is such that the alcohol is retained in his blood for a longer period than is usual is not capable of amounting to a special reason.
<u>Milliner v Thorne</u> [1972] RTR 279	The fact that no other road user was endangered by the driving of the offender cannot amount to special reason for not disqualifying for a blood alcohol offence.
<u>James v Hall</u> [1972] 2 All ER 59 <u>Coombs v Kehoe</u> [1972] 2 All ER 55 <u>Haime v Walklett</u> (1983) 5 Cr App R(S) 165 <u>Chatters v Burke</u> (1986) 8 Cr App R(S) 222 <u>DPP v Corcoran</u> (1991) 12 Cr App R(S) 652 <u>CPS v Humphries</u> [2000] 2 Cr App R(S) 1 <u>DPP v Conroy</u> [2004] 1 Cr App R(S) 37	The fact that the offender has driven only a short distance will amount to a special reason only in extreme cases.
<u>R v Baines</u> (1970) 54 Cr App R 481 <u>Taylor v Rajan</u> [1974] 1 All ER 1087 <u>Evans v Bray</u> [1977] RTR 24 <u>Powel v Gliha</u> [1979] RTR 126	Where an offender has consumed alcohol in the expectation that he would not be driving again that day, and is then required to drive by an unforeseen emergency, the facts may amount to special reason if the emergency was sufficiently grave and could not reasonably have been foreseen, and if there was no alternative means of transport in the circumstances, and the degree of excess of the offender's blood alcohol level was moderate.
<u>Alexander v Latter</u> [1972] RTR 441 <u>R v Messom</u> (1973) 57 Cr App R 481 <u>Pugsley v Hunter</u> [1973] 2 All ER 10 <u>DPP v O'Connor</u> (1992) 13 Cr App R(S) 188	Where an offender has consumed some alcohol, but as the result of an act of another person has consumed far more alcohol than he intended or was aware of doing, and the fact that his blood alcohol level is excessive can be shown to be the result of the additional alcohol which he has consumed unintentionally, the court may find that a special reason exists.
<u>DPP v O'Meara</u> (1988) 10 Cr App R(S) 56	The fact that an offender has consumed alcohol during the evening, and is found to

	have an excess alcohol level the following morning, is not a special reason for not disqualifying.
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