

Disqualification

A Principles

Disqualification is part of the sentence. Accordingly when setting the “discretionary” element of the disqualification (i.e. disregarding any period being spent in custody – see below) the court must have regard to the purposes of sentencing in section 57 of the Sentencing Code, which include: the punishment of offenders, the reduction of crime, the reform and rehabilitation of offenders and the protection of the public, when deciding the length of any disqualification.

In setting the length of any disqualification, sentencers should not disqualify for a period that is longer than necessary and should bear in mind the need for rehabilitation (for example, by considering the effects of disqualification on employment or employment prospects).

Sentencers should also be mindful of the risk of long disqualifications leading to further offences being committed, by reason of a temptation to drive unlawfully.

B Minimum disqualification period

The minimum disqualification period for this offence is x years.

An offender must be disqualified for at least two years if he or she has been disqualified two or more times for a period of at least 56 days in the three years preceding the commission of the offence. The following disqualifications are to be disregarded for the purposes of this provision:

- interim disqualification;
- disqualification where vehicle used for the purpose of crime;
- disqualification for stealing or taking a vehicle or going equipped to steal or take a vehicle.

An offender must be disqualified for at least three years if they have been convicted of any of the following offences once or more in the 10 years preceding the commission of the current [drink/drug-drive] offence

- causing death by careless driving under the influence of drink or drugs
- driving or attempting to drive while unfit;
- driving or attempting to drive with excess alcohol;
- driving or attempting to drive with concentration of specified controlled drug above specified limit;
- failing to provide a specimen (where that is an offence involving obligatory disqualification); or
- failing to allow a specimen to be subjected to laboratory test (where that is an offence involving obligatory disqualification).

C Special reasons

The period of disqualification may be reduced or avoided if there are special reasons. These must relate to the offence; circumstances peculiar to the offender cannot constitute special reasons. To constitute a special reason, a matter must:

- be a mitigating or extenuating circumstance;
- not amount in law to a defence to the charge;
- be directly connected with the commission of the offence;
- be one which the court ought properly to take into consideration when imposing sentence.

D Interaction with custodial period – same offence

Under section 35A of the Road Traffic Offenders Act 1988 where a court imposes a disqualification in addition to a custodial sentence or a detention and training order for this offence, it must extend the disqualification period to take account of the custodial term imposed by:

- one half of the custodial term imposed for an immediate standard determinate sentence; no extension period should be imposed where a sentence is suspended.
- two thirds of the custodial term for an extended sentence;
- the custodial element of a serious terrorism sentence or extended sentence for a serious terrorism offence (i.e. one which carries a maximum of life imprisonment); or
- the term specified in the minimum term order of a life sentence.

This will avoid the disqualification expiring, or being significantly diminished, during the period the offender is in custody. The table at section 166 of the Sentencing Code provides further detail. (Note: this table applies to disqualification for non-Road Traffic Act 1988 offences but the principles apply to disqualifications imposed under that Act as well.)

Periods of time spent on remand or subject to an electronically monitored curfew are generally ignored. However, if the time spent on remand would lead to a disproportionate result in terms of the period of disqualification, then the court may consider setting the discretionary element (i.e. the period which would have been imposed but for the need to extend for time spent in custody) to take account of time spent on remand. This should not reduce the discretionary term below the statutory minimum period of disqualification.

E Interaction with custodial period – different offence

The court may be imposing a custodial sentence on the offender for another offence, which is not the one for which they are being disqualified. In this instance, under section 35B of the Road Traffic Offenders Act 1988, it should have regard to "the

diminished effect of disqualification as a distinct punishment if the person who is disqualified is also detained in pursuance of a custodial sentence”.

Where the court is intending to impose a disqualification and considering a custodial sentence for that and/or another offence, the following checklist may be useful:

- Step 1 – does the court intend to impose a custodial term for the offence for which they are imposing a disqualification?

YES – the court must impose the appropriate extension period and consider step 2.

NO – go to step 3.

- Step 2 – does the court intend to impose a custodial term for another offence (which is longer or consecutive) or is the defendant already serving a custodial sentence?

YES – consider what uplift in the period of discretionary disqualification (i.e. the period which would have been imposed but for the need to extend for time spent in custody) is required, having regard to the diminished effect of disqualification as a distinct punishment. Ignore any custodial term imposed for the offence for which disqualification is being imposed. Discretionary period + extension period + uplift = total period of disqualification

NO – no further uplift required. Discretionary period + extension period = total period of disqualification

- Step 3 – does the court intend to impose a custodial term for another offence or is the defendant already serving a custodial sentence?

YES – then consider what uplift in the period of discretionary disqualification is required, having regard to the diminished effect of disqualification as a distinct punishment. Discretionary period + uplift = total period of disqualification

NO – no increase is needed to the discretionary period.

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