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Services

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Criminal Law & Fraud



If you are convicted of certain road traffic offences the court may disqualify you from driving. Alternatively, if you receive 12 or more penalty points within a three-year period you may be disqualified under the “totting up” procedure.

Types of disqualification from driving

A disqualification from driving can arise in one of the following ways:

- Following conviction for an offence which carries a **obligatory** ban, e.g. driving when unfit through drink or drugs, or dangerous driving;
- Following conviction for an offence which carries a **discretionary** ban;
- As a result of incurring 12 or more penalty points within a three year period under the **totting up** procedure (for further details please see our factsheet “Penalty Points and Totting Up”);
- Following conviction for any offence, or an offence where a vehicle was used for crime;
- Where a ‘new driver’ accumulates 6 or more penalty points within their two year probationary period.

Obligatory disqualifications

If a person is convicted of an offence involving obligatory disqualification the court must usually order that he be disqualified from driving for a period of not less than **12 months**. However, in some situations where there are **special reasons** the court may decide to order a disqualification for a shorter period, or decide not to disqualify to driver at all. (For further information on special reasons see below.)

Certain repeat offences carry an increased minimum disqualification period. Anyone who has been convicted of one of a number of specified offences who has committed another of those offences within a ten year period will be subject to a minimum **three-year** disqualification. For example, someone who committed the offence of driving with excess alcohol in 2002 will be subject to a minimum three year disqualification if they commit the offence for a second time in 2011.

Anyone who has previously been disqualified from driving for 56 days or more, within the past three years of the commission of a further offence, will be subject to a minimum **two-year** disqualification.

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Offences under s40A of the Road Traffic Act 1988 (including using a vehicle in a dangerous condition) carry a minimum **six-month** disqualification if the driver has committed the same offence within the previous three years.

Discretionary disqualifications

A person can be disqualified for any such period as the court thinks fit if the offence carries a discretionary disqualification. The period of disqualification will vary according to the specific offence.

Where a driver is subject to a discretionary disqualification he will not receive penalty points for the offence for which he has been disqualified. However, any existing points will remain on their driving licence.

Disqualifications as a result of “Totting Up”

Anyone who incurs 12 or more penalty points within a three year period will be subject to a minimum **6 month** disqualification from driving. However, their existing points will be “wiped clean” from their licence. For further details in relation to the totting up disqualification periods please see our factsheet “Penalty Points and Totting Up”.

Special reasons

The court may impose a reduced disqualification period, or decide not to disqualify at all, if it finds that there are **special reasons** not to do so.

There is no statutory definition of a special reason. The special reason must relate to the offence committed rather than to the offender. Examples of special reasons have included where a driver has been convicted of a drink driving offence but his drink has been spiked. Alternatively, there may be special reasons if a driver has to drive in a medical or other emergency situation.

You should always seek specialist legal advice specific to your personal circumstances if you wish to put forward special reasons. The law can be extremely complicated in this area and the onus is on the defendant to show that a special reason exists. The court only finds that special reasons exist in a minority of cases.

Even if the court finds that special reasons do exist it is still possible that it will decide to disqualify the driver in question.

Mitigating circumstances – “Exceptional Hardship”

In relation to disqualifications under the “totting up” procedure, the court may consider that there are mitigating circumstances which mean that the defendant should be disqualified for a shorter period, or not be disqualified at all. Mitigating circumstances under the “totting up” procedure cover a wider range of situations than special reasons (see above). This is because they can include reasons specific to the offender as well as the offence.

The most common mitigating circumstance is that of **exceptional hardship**. This means that the hardship must be more than would normally be suffered. You should always seek legal advice specific to your situation if you wish to argue exceptional hardship as the law is complicated.

Loss of employment as a result of disqualification may represent exceptional hardship, although this will not always be the case. However, the court will take into account hardship that will be suffered by people other than the defendant who are totally innocent – for example the defendant’s children or an elderly relative who relies on the defendant for their care.

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Any circumstances that have been taken into account on a previous occasion where the defendant has previously avoided disqualification (or has received a reduced disqualification) will not be taken into account.

The onus is on the defendant to show that mitigating circumstances exist.

For many people a disqualification from driving can have an extremely serious impact, both in relation to their employment or private lives. We can advise you as to what you should do if you are facing a disqualification from driving.

I require further advice. What should I do now?

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