

### ***'Totting up' disqualification***

7. Disqualification for a **minimum** of six months must be ordered if an offender incurs 12 penalty points or more within a three-year period.<sup>7</sup> The minimum period may be automatically increased if the offender has been disqualified within the preceding three years. Totting up disqualifications, unlike other disqualifications, erase all penalty points.

8. The period of a totting up disqualification can be reduced or avoided for exceptional hardship or other mitigating circumstances. No account is to be taken of hardship that is not exceptional hardship or circumstances alleged to make the offence not serious. Any circumstances taken into account in the preceding three years to reduce or avoid a totting disqualification must be disregarded.<sup>8</sup>

**9. Consult your legal adviser for further guidance on exceptional hardship applications.**

### ***Discretionary disqualification***

10. Whenever an offender is convicted of an endorsable offence or of taking a vehicle without consent, the court has a discretionary power to disqualify instead of imposing penalty points. The individual offence guidelines above indicate whether the offence is endorsable and the number or range of penalty points it carries.

11. The number of variable points or the period of disqualification should reflect the seriousness of the offence. Some of the individual offence guidelines above include penalty points and/or periods of disqualification in the sentence starting points and ranges; however, the court is not precluded from sentencing outside the range where the facts justify it. Where a disqualification is for less than 56 days, there are some differences in effect compared with disqualification for a longer period; in particular, the licence will automatically come back into effect at the end of the disqualification period (instead of requiring application by the driver) and the disqualification is not taken into account for the purpose of increasing subsequent obligatory periods of disqualification.<sup>9</sup>

12. In some cases in which the court is considering discretionary disqualification, the offender may already have sufficient penalty points on his or her licence that he or she would be liable to a 'totting up' disqualification if further points were imposed. In these circumstances, the court should impose penalty points rather than discretionary disqualification so that the minimum totting up disqualification period applies (see paragraph 7 above).

### **Disqualification until a test is passed**

13. Where an offender is convicted of dangerous driving, the court must order disqualification until an extended driving test is passed.

14. The court has discretion to disqualify until a test is passed where an offender is convicted of any endorsable offence.<sup>10</sup> Where disqualification is obligatory, the extended test applies. In other cases, it will be the ordinary test.

15. An offender disqualified as a 'totter' under the penalty points provisions may also be ordered to re-take a driving test; in this case, the extended test applies.

16. The discretion to order a re-test is likely to be exercised where there is evidence of inexperience, incompetence or infirmity, or the disqualification period is lengthy (that is, the offender is going to be 'off the road' for a considerable time).

<sup>7</sup> Road Traffic Offenders Act 1988, s.35

<sup>8</sup> *ibid.*

<sup>9</sup> *ibid.*, ss.34(4), 35(2), 37(1A)

<sup>10</sup> *ibid.*, s.36(4)