

DRAFT ROAD TRAFFIC (No. 53) (JERSEY) REGULATIONS 200-

**Lodged au Greffe on 12th February 2002
by the Home Affairs Committee**



STATES OF JERSEY

STATES GREFFE

150

2002

P.24

Price code: B

REPORT

On 28th March 2000, the Home Affairs Committee lodged P.40/2000, the draft Road Traffic (No. 51) (Jersey) Regulations 2000, the principal purpose of which was to provide a power of interim disqualification after conviction but before sentence. P.40/2000 also sought to make a minor amendment consequent on the repeal and replacement of the Road Transport Lighting (Jersey) Law 1956. However, on 4th April 2000, Deputy G.C.L. Baudains of St. Clement lodged P.43/2000, an amendment to P.40/2000. Before the amendment could be considered fully, a number of other substantive amendments to the Road Traffic (Jersey) Law 1956 were identified. It was considered better to amalgamate these into one single amendment, although it has taken some time to complete the consultation and drafting process. The following summarizes the purpose of these amendments.

Regulation 2 - Power of Interim Disqualification

At present, if a person is presented before the Magistrate's Court, Youth Court or the Royal Court and sentencing is adjourned (for example to obtain background and/or psychiatric reports), that person, even if there has been a plea of guilty, remains at liberty to drive a motor vehicle even though the Court will in due course almost certainly be bound to disqualify the defendant. Those cases which are remanded for background reports are themselves almost inevitably the more serious cases in which the need to disqualify is all the more pressing.

There has long been a power in the courts of England and Wales to order disqualification from driving immediately upon an accused being presented to the court and pleading guilty.

This amendment will empower the Magistrate's Court, Youth Court or the Royal Court to order the disqualification from driving of a defendant before he/she has actually been sentenced for an offence in respect of which disqualification may be imposed. Such power would only be possible to invoke after the defendant had pleaded guilty to, or been found guilty of, the relevant offence. The interim disqualification would apply pending the eventual imposition of sentence. Any period of disqualification imposed on passing the eventual sentence would be treated as reduced by the period during which the defendant had been subject to an interim disqualification. Similar provision would also be made relating to powers to disqualify upon the committal of a person from the Magistrate's Court or Youth Court to the Royal Court.

Regulation 3- Retention of driving licences following disqualification

Article 10(6) of the Road Traffic (Jersey) Law 1956 presently requires that licences having been surrendered to the Court upon disqualification are retained by the Judicial Greffier until the holder has made a demand for its return, following either the expiry of a period of disqualification and/or the taking of a test. This requirement was more relevant prior to the computerization of the driving licence system when the same licence was renewed annually or returned to the holder following disqualification. However, since computerization, licences are now valid for five years. Furthermore, if a person is disqualified from driving and required to take a test, a new provisional driving licence and, upon successful completion of the test, a new full driving licence have to be issued. Therefore, it no longer makes sense to require that time-expired licences, or licences involving the re-taking of a test, are retained by the court indefinitely. The purpose of this draft Regulation is, therefore, to enable the licensing authority to dispose of licences which have either been replaced or have expired.

Regulation 4- Mandatory disqualifications for offences involving alcohol

This draft Regulation addresses an anomaly identified by the case of AG v Power 2000 JLR 53. Where a person is convicted within ten years of a second or subsequent offence under any of Articles 15A, 16, 16A or 16C, there is a mandatory three-year disqualification. At present, however, this only applies if it is the same offence. For example, a subsequent offence of failing to provide a specimen (Article 16C) where the first offence was one of driving under the influence of drink or drugs (Article 16), must be treated as a first offence for the purpose of imposing a disqualification and would only attract the minimum disqualification of twelve months. This draft Regulation means that drink or drug-related driving offences can be grouped together for the purpose of determining whether an offence is a first or subsequent offence for the purpose of imposing a disqualification.

Regulation 5 - Disqualification until test passed

The present Article 17(1) can be construed as making disqualification mandatory only where a fixed period of disqualification is imposed. This draft Regulation clarifies the provisions regarding disqualification until a new driving test has been taken so that it is mandatory (unless there are special reasons) in the case of the more serious offences involving dangerous or careless driving or relating to alcohol or drugs, and discretionary in the case of speeding offences. A new paragraph (1A) has been introduced which provides for discretionary disqualification until test passed in the case of speeding offences. This will provide the courts with a further sanction for the offence of speeding, particularly with regard to persistent

offenders or cases of excessive speed.

Regulation 6 - Correction to Article 34

Draft Regulation 6 makes a minor amendment of a corrective nature of a wrong cross-reference.

Regulation 7 - Increase in powers of Centeniers

The Centeniers' Association has sought an increase in the powers of Centeniers at Parish Hall enquiries. The Association cites as background to its proposals the increasing pressure on the workload of the Magistrate's Court as a result of inflation, their fining powers not having been reviewed since 1990, and the recommendations of both the Le Quesne and the Clothier report into the policing of the Island. Whilst their proposals covered more than increased fining powers, these draft Regulations are concerned solely with increasing the level of fines that can be imposed for road traffic offences. Thus, this draft Regulation provides for an increase in the power of Constables and Centeniers to inflict and levy summarily fines from £50 to £100 for road traffic offences only. This is expressed as one-fifth of level 2 on the standard scale so as to obviate the need for further amendment should the value of levels on the standard scale be increased in the future. This proposal has the support of the Attorney General following prior consultation with the Bailiff, the States of Jersey Police, the Magistrate and the Centeniers' Association. The Attorney General will draw to the attention of the Association that an increase under the Road Traffic Law does not confer an increase in the jurisdiction of Centeniers under any other legislation, i.e., offences under the Policing of Parks, Beaches and Roads Regulations and offences against Article 15A of the Motor Traffic (Third Party Insurance) (Jersey) Law 1948. However, it does include all construction and use infringements as these are offences under the Road Traffic (Jersey) Law 1956.

Regulations 8 and 9 - Matters brought forward from P.127/1999

Draft Regulations 8 and 9 make minor revisions and corrections.

Regulation 10 - Minor lighting amendment

In P.40/2000, the Home Affairs Committee sought to make a minor amendment consequent upon the repeal and replacement of the Road Transport Lighting (Jersey) Law 1956. However, at P.43/2000, Deputy G.C.L. Baudains of St. Clement lodge an amendment whereby endorsement or disqualification for lighting offences would not be available for first offences. The Home Affairs Committee concedes that such a sanction for first offences would be unnecessary and overly severe. This is reflected in the new draft Regulation 11.

There are no financial or manpower implications arising from these draft Regulations.

Explanatory Note

These Regulations further amend the Road Traffic (Jersey) Law 1956 so as to -

- (1) provide a power of interim disqualification after conviction but before sentence for any offence for which disqualification from holding or obtaining a driving licence may be imposed (*Regulation 2*);
- (2) revise the provision concerning the retention of driving licences following disqualification; (*Regulation 3*);
- (3) provide for mandatory disqualification (unless there are special reasons) for three years in the case of a second or subsequent offence involving alcohol (*Regulation 4*);
- (4) clarify the provisions regarding disqualification until a fresh driving test has been taken so that it is mandatory (unless there are special reasons) in the case of the more serious offences involving dangerous or careless driving or relating to alcohol or drugs, and discretionary in the case of an offence of driving with excess speed (*Regulation 5*);
- (5) increase the power of Constables and Centeniers to inflict and levy summarily fines from £50 to £100 (*Regulation 7*);
- (6) make a minor amendment consequent on the repeal and replacement of the Road Transport Lighting (Jersey) Law 1956(*Regulation 10*); and
- (7) make other minor revisions and corrections (*Regulations 6, 8 and 9*);

Road Traffic (Jersey) Law 1956

ROAD TRAFFIC (No. 53) (JERSEY) REGULATIONS 200-

(Promulgated on the day of 200-)

STATES OF JERSEY

The day of 200-

THE STATES, in pursuance of the powers conferred on them by the Order in Council of the twenty-sixth day of December 1851 ^[1] and Article 49 of the Road Traffic (Jersey) Law 1956, as amended, ^[2] have made the following Regulations

1. In these Regulations “Law” means the Road Traffic (Jersey) Law 1956, as amended. ^[3]
2. After Article 8(1) of the Law ^[4] there shall be inserted the following paragraph -
“(1A) Where
(a) the Magistrate’s Court -
 - (i) pursuant to paragraph (2) of Article 4 of the Magistrates Court (Miscellaneous Provisions) (Jersey) Law 1949, as amended, ^[5] commits a person to the Royal Court for trial in respect of any offence specified in the First Schedule to this Law to which he has pleaded guilty; or
 - (ii) pursuant to Article 4A of that Law, ^[6] commits a person to be sentenced for any such offence after finding him guilty; or
(b) the Magistrate’s Court or the Royal Court, after a person has pleaded guilty to, or been found guilty of, any such offence, adjourns before sentencing him,

that court may order him to be disqualified for holding or obtaining a licence until he has been so sentenced, and any period of disqualification imposed on sentence shall be treated as reduced by the period during which he has been so disqualified by virtue of this paragraph.”.

3. For Article 10(6) of the Law ^[7] there shall be substituted the following paragraph -
“(6) Where a person is disqualified for holding or obtaining a licence, any licence in force in respect of him immediately before the imposition of such disqualification shall be surrendered to the court and retained by the licensing authority -
 - (a) where he been so disqualified until he has, since the date of that conviction, passed the prescribed test, until it expires; or
 - (b) in any other case, until it expires or is returned on demand to the person concerned when he is no longer so disqualified, whichever is the sooner.”.

4.-(1) In Article 15A of the Law ^[8] -

- (a) in paragraph (5) for the words “be disqualified for a period of twelve months for holding or obtaining a

licence” there shall be substituted the words “in the case of a first offence, be disqualified for a period of twelve months and in the case of a second or subsequent offence committed within 10 years of the last such offence, for a period of three years, for holding or obtaining a licence.”; and

(b) after paragraph (5) there shall be inserted the following paragraph-

“(6) In paragraph (5) of this Article “offence” means an offence under this Article or under Article 16 16A or 16C of this Law”.

(2) In Article 16 of the Law ^[9] -

(a) in paragraph (2) after the words “subsequent offence” there shall be inserted the words “committed within 10 years of the last such offence”; and

(b) after paragraph (2) there shall be inserted the following paragraph-

“(3) In paragraph (2) of this Article “offence” means an offence under this Article or under Article 15A, 16A or 16C of this Law”.

(3) In Article 16A of the Law ^[10] -

(a) in paragraph (2) after the words “subsequent offence” there shall be inserted the words “committed within 10 years of the last such offence”; and

(b) after paragraph (2) there shall be inserted the following paragraph-

“(2A) In paragraph (2) of this Article “offence” means an offence under this Article or under Article 15A, 16 or 16C of this Law”.

(4) After Article 16C of the Law ^[11] -

(a) in paragraph (8) after the words “subsequent offence” there shall be inserted the words “committed within 10 years of the last such offence”; and

(b) after paragraph (8) there shall be inserted the following paragraph-

“(8A) In paragraph (8) of this Article “offence” means an offence under this Article or under Article 15A, 16, or 16A of this Law”.

5. In Article 17 of the Law ^[12] -

(a) for paragraph 1 there shall be substituted the following paragraphs -

“(1) Where a person is convicted of an offence under Articles 14, 14A, 15, 15A, 16, 16A, 16B or 16C of this Law the court shall (whether or not that person is also disqualified for holding or obtaining a licence for a period of time) make an order disqualifying him for holding or obtaining a licence (other than a provisional licence) until he has, since the date of that conviction, passed the prescribed test unless the court for any special reasons think fit to order otherwise.

(1A) Where a person is convicted of an offence under Article 13A of this Law the court may (whether or not that person is also disqualified for holding or obtaining a licence for a period of time) make an order disqualifying him for holding or obtaining a licence (other than a provisional licence) until he has, since the date of that conviction, passed the prescribed test.”; and

(b) in paragraph (2) after the words “paragraph (1)” there shall be inserted the words “or (1A)”.

6. In the heading to, and paragraph (1) of, Article 34 of the Law ^[13] for the expression “32A” there shall be substituted the expression “32B”.

7. In Article 46 of the Law ^[14] for the words “fifty pounds” there shall be substituted the words “one fifth of level 2 on the standard scale’.

8. In Articles 47 and 48 of the Law ^[15] for the words “General Revenues” there shall be substituted the words “annual income”.

9. Article 50 of the Law ^[16] shall be repealed.

10. In the First Schedule to the Law ^[17] -

(a) Part C shall be deleted; and

(b) after paragraph 2 of Part E there shall be added the following paragraph -

“3. Any offence against an order made under Article 39, being an offence-

(a) of contravening or failing to comply with any requirement with respect to lighting equipment and reflectors; or

(b) of using a vehicle on a road, or causing or permitting a vehicle to be so used, which does not comply with such a requirement,

other than a first offence.”.

11. These Regulations may be cited as the Road Traffic (No. 53) (Jersey) Regulations 200- and shall come into force on the day following promulgation.

[1]

Recueil des Lois, Tomes I-III, page 196.

[2]

Recueil des Lois, Tome VIII, page 636.

[3]

Recueil des Lois, Tome VIII, page 579 and Nos. 6998, 7004, 7020, 7072, 7081, 7219, 7229, 7411, 7472, 7495, 7878, 7917, 8016, 8077, 8096, 8150, 8160, 8196, 8340, 8457, 8624, 8722, 9116, 9180, 9205, 9294, 9308 and 178/2001.

[4]

Recueil des Lois, Tome VIII, page 593.

[5]

Recueil des Lois, Tome VII, page 547 and Volume 1996-1997, page 171.

[6]

Recueil des Lois, Tome VII, page 547 and Volume 1996-1997, page 171.

[7]

Recueil des Lois, Tome VIII, page 596.

[8]

Recueil des Lois, Tome VIII, page 603 and No. 9116.

[9]

Recueil des Lois, Tome VIII, page 603 and Nos. 8016, 8096 and 9294.

[10]

Recueil des Lois, Tome VIII, page 604 and Nos. 8016, 8624 and 9116.

[11]

Recueil des Lois, Tome VIII, page 604 and Nos. 8016, 8624 and 9116.

[12]

Recueil des Lois, Tome VIII, page 605 and No. 8016.

[13]

Recueil des Lois, Tome VIII, page 620 and No. 9294.

[14]

Recueil des Lois, Tome VIII, page 635 and No. 8077.

[15]

Recueil des Lois, Tome VIII, page 636.

[16]

Recueil des Lois, Tome VIII, page 637.

[17]

Recueil des Lois, Tome VIII, page 639 and Nos. 8016, 9116 and 9205.