

Excess Alcohol (drive/attempt to drive) (Revised 2017)

Road Traffic Act 1988, s.5(1)(a)

Effective from: 24 April 2017

Triable only summarily:

Maximum: Unlimited fine and/or 6 months

Offence range: Band B fine – 26 weeks' custody

Steps 1 and 2 – Determining the offence seriousness

- Must endorse and disqualify for at least 12 months
 - Must disqualify for at least 2 years if offender has had two or more disqualifications for periods of 56 days or more in preceding 3 years – refer to disqualification guidance and consult your legal adviser for further guidance
 - Must disqualify for at least 3 years if offender has been convicted of a relevant offence in preceding 10 years – consult your legal adviser for further guidance
 - Extend disqualification if imposing immediate custody
- If there is a delay in sentencing after conviction, consider interim disqualification

The starting point applies to all offenders irrespective of plea or previous convictions.

Level of alcohol			Starting point	Range	Disqualification	Disqual. 2nd offence in 10 years – see note above
Breath (µg)	Blood (mg)	Urine (mg)				
120–150 and above	276–345 and above	367–459 and above	12 weeks' custody	High level community order – 26 weeks' custody	29 – 36 months (Extend if imposing immediate custody)	36 – 60 months
90 – 119	207–275	275–366	Medium level community order	Low level community order – High level community order	23 – 28 months	36 – 52 months
60 – 89	138–206	184–274	Band C Fine	Band C Fine – Low level community order	17 – 22 months	36 – 46 months
36 – 59	81–137	108–183	Band C Fine	Band B Fine – Band C fine	12 – 16 months	36 – 40 months

Note: when considering the guidance regarding the length of disqualification in the case of a second offence, the period to be imposed in any individual case will depend on an assessment of all the relevant circumstances, including the length of time since the earlier ban was imposed and the gravity of the current offence but disqualification must be for at least three years.

The court should then consider further adjustment for any aggravating or mitigating factors. The following is a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the sentence arrived at so far.

Factors increasing seriousness

Statutory aggravating factors:

- Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction
- Offence committed whilst on bail

Other aggravating factors:

- Failure to comply with current court orders
- Offence committed on licence or post sentence supervision
- LGV, HGV, PSV etc
- Poor road or weather conditions
- Carrying passengers
- Driving for hire or reward
- Evidence of unacceptable standard of driving
- Involved in accident
- High level of traffic or pedestrians in the vicinity

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant/recent convictions
- Genuine emergency established *
- Spiked drinks *
- Very short distance driven *
- Remorse
- Good character and/or exemplary conduct
- Serious medical condition requiring urgent, intensive or long-term treatment
- Age and/or lack of maturity where it affects the responsibility of the offender
- Mental disorder or learning disability
- Sole or primary carer for dependent relatives

*even where not amounting to special reasons

Step 3 – Consider any factors which indicate a reduction, such as assistance to the prosecution

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

Step 4 – Reduction for guilty pleas

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

Step 5 – Totality principle

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the *Offences Taken into Consideration and Totality* guideline.

Step 6 – Compensation and ancillary orders

In all cases, the court should consider whether to make compensation and/or other ancillary orders including offering a drink/drive rehabilitation course, deprivation, and /or forfeiture or suspension of personal liquor licence.

Step 7 – Reasons

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

Step 8 – Consideration for time spent on bail

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.