

Excess Alcohol (in charge) (Revised 2017)

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

Effective from: 24 April 2017

Triable only summarily:

Maximum: Level 4 fine and/ or 3 months

Offence range: Band A fine – 6 weeks' custody

Steps 1 and 2 – Determining the offence seriousness

- **Must endorse and may disqualify. If no disqualification impose 10 points**
- **Extend any disqualification if imposing immediate custody**

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

Level of alcohol			Starting point	Range	Disqualification/Points
Breath (µg)	Blood (mg)	Urine (mg)			
120–150 and above	276–345 and above	367–459 and above	Medium level community order	Low level community order – 6 weeks' custody	Disqualify 6 – 12 months (Extend if imposing immediate custody)
90 – 119	207–275	275–366	Band C fine	Band C Fine – Medium level community order	Consider disqualification up to 6 months OR 10 points
60 – 89	138–206	184–274	Band B fine	Band B fine – Band C fine	Consider disqualification OR 10 points
36-59	81 – 137	108 – 183	Band B fine	Band A fine – Band B fine	10 points

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
- In charge of LGV, HGV, PSV etc
- High likelihood of driving
- Offering to drive for hire or reward

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant/recent convictions
- Low likelihood of driving
- Spiked drinks *
- 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.