

# Fail to provide specimen for analysis (drive/attempt to drive) (Revised 2017)

Road Traffic Act 1988, s.7(6)

**Effective from:** 24 April 2017

**Triable only summarily:**

**Maximum: Unlimited fine and/ or 6 months**

**Offence range: Band B fine – 26 weeks' custody**

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## Step 1 – Determining the offence category

The Court should determine the offence category using the table below.

Category 1 Higher culpability **and** greater harm

Category 2 Higher culpability **and** lesser harm **or** lower culpability **and** greater harm

Category 3 Lower culpability **and** lesser harm

The court should determine the offender's culpability and the harm caused with reference **only** to the factors below. Where an offence does not fall squarely into a category, individual factors may require a degree of weighting before making an overall assessment and determining the appropriate offence category.

**CULPABILITY demonstrated by one or more of the following:**

**Factors indicating higher culpability**

- Deliberate refusal/ failure

**Factors indicating lower culpability**

- All other cases

**HARM demonstrated by one or more of the following:**

**Factors indicating greater harm**

- High level of impairment

## Factors indicating lesser harm

- All other cases

## Step 2 – Starting point and category range

Having determined the category at step one, the court should use the appropriate starting point to reach a sentence within the category range in the table below.

- **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 the 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 seriousness	Starting point	Range	Disqualification	Disqual. 2 <sup>nd</sup> offence in 10 years
Category 1	12 weeks' custody	High level community order – 26 weeks' custody	29 – 36 months  (Extend if imposing immediate custody)	36 – 60 months  (Extend if imposing immediate custody)
Category 2	Medium level community order	Low level community order – High level community order	17 – 28 months	36 – 52 months
Category 3	Band C fine	Band B fine – Low level community order	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
- 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

### **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.

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### **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.

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### **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.

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### **Step 6 – Consider 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.

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### **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.

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### **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.