

Driving or Attempting to Drive with a specified drug above the specified limit

Road Traffic Act 1988, 5A

Triable only summarily

Maximum: Unlimited fine and/or 6 months' custody

Offence range: Band B fine – 26 weeks' custody

Obligatory disqualification: minimum 12 months

(Minimum 3 years disqualification if the offender has been convicted of any of:

- causing death by careless driving when under the influence of drink or drugs;**
- driving or attempting to drive while unfit**
- driving or attempting to drive with excess alcohol,**
- driving or attempting to drive with concentration of specified controlled drug above specified limit**
- failing to provide a specimen) where that is an offence involving obligatory disqualification,**
- failing to allow a specimen to be subjected to laboratory test) where that is an offence involving obligatory disqualification**

in the 10 years preceding commission of the current offence.

Otherwise minimum 2 years disqualification if the offender has been disqualified two or more times for a period of at least 56 days in the three years preceding the commission of the offence)

STEP ONE

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. A combination of factors in any category may justify upwards adjustment from the starting point before consideration of aggravating/mitigating factors.

Culpability demonstrated by one or more of the following

Factors indicating higher culpability

- Driving an LGV, HGV or PSV etc
- Driving for hire or reward
- Evidence of another specified drug or of alcohol in the body

- For these purposes where the following pairs of drugs appear together they shall be treated as one drug as they may appear in the body as a result of a single drug use: Cocaine and benzoylecgonine (BZE); 6-Monoacetyl-morphine and morphine; or Diazepam and Temazepam.
- This factor may apply whether or not the 'other' specified drug or alcohol is present at a level that could give rise to separate charges.
- Regard should be had to totality (see step 5) if sentencing for more than one offence.

Factors indicating lower culpability

- All other cases

Harm demonstrated by one or more of the following:

Note: It is not possible to draw a direct connection between the levels of a substance detected and the level of harm

The limits for illegal drugs are set in line with a zero tolerance approach but ruling out accidental exposure. The limits for drugs that may be medically prescribed are set in line with a road safety risk-based approach, at levels above the normal concentrations found with therapeutic use. This is different from the approach taken when setting the limit for alcohol, where the limit was set at a level where the effect of the alcohol would be expected to have impaired a person's driving ability.

The analysis of drugs in blood is more complex than that for alcohol and there is a larger margin of uncertainty in the measurements. Concentrations of specified substances in blood for the purposes of this offence are expressed in terms of 'not less than' which takes account of the margin of uncertainty for the particular substance.

Factors indicating greater harm

- Obvious signs of impairment
- Evidence of an unacceptable standard of driving

Factors indicating lesser harm

- All other cases

STEP TWO

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.

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

Level of seriousness	Starting point	Range	Disqualification	Disqual. 2 nd 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.

Where another offence or offences arise out of the same incident or facts concurrent sentences **reflecting the overall criminality** of offending will ordinarily be appropriate: please refer to the *Totality* guideline and step five of this guideline.

Below is a **non-exhaustive** list of additional elements providing the context of the offence and factors relating to the offender. Identify whether a combination of these or other relevant factors should result in any 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:

- High level of traffic or pedestrians in the vicinity
- Poor road or weather conditions
- Involved in accident (where not taken into account at step 1)
- Carrying passengers
- Failure to comply with current court orders
- Offence committed on licence or post sentence supervision

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions or no relevant/recent convictions
- Very short distance driven
- Genuine emergency established
- Genuine misunderstanding about safe dosage of prescribed medication
- Remorse
- Good character and/or exemplary conduct
- Age and/or lack of maturity
- Mental disorder or learning disability
- Sole or primary carer for dependent relatives

STEP THREE

Consider any factors which indicate a reduction for assistance to the prosecution

The court should take into account section 74 of the Sentencing Code (reduction in sentence for assistance to prosecution) 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 FOUR

Reduction for guilty pleas

The court should take account of any potential reduction for a guilty plea in accordance with section 73 of the Sentencing Code and the Reduction in Sentence for a Guilty Plea guideline.

STEP FIVE

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 Totality guideline.

STEP SIX

Compensation and ancillary orders

In all cases the court should consider whether to make compensation and/or other ancillary orders.

Ancillary orders – Magistrates' Court

STEP SEVEN

Reasons

Section 52 of the Sentencing Code imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP EIGHT

Consideration for time spent on bail (tagged curfew)

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003 and section 325 of the Sentencing Code.

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