

# **Being in charge of a motor vehicle with a specified drug above the specified limit**

**Road Traffic Act 1988, 5A**

**Triable only summarily**

**Maximum: Level 4 fine and/or 3 months**

**Offence range: Band B fine – 12 weeks' custody**

## STEP ONE

### Determining the offence category

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

<b>Category 1</b>	Higher culpability <b>and</b> greater harm
<b>Category 2</b>	Higher culpability <b>and</b> lesser harm <b>or</b> lower culpability <b>and</b> greater harm
<b>Category 3</b>	Lower culpability <b>and</b> 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

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

##### Factors indicating greater harm

- Obvious signs of impairment

##### 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/ points
<b>Category 1</b>	High level community order	Medium level community order – 12 weeks' custody	Consider disqualification (extend if imposing immediate custody) <b>OR</b> 10 points
<b>Category 2</b>	Band C fine	Band B fine – Medium level community order	Consider disqualification <b>OR</b> 10 points
<b>Category 3</b>	Band B fine	Band B fine	10 points

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:*

- 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
- 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