

# Archive: Drug driving (guidance only)

Road Traffic Act 1988, s.5A

Guideline users should be aware that the Equal Treatment Bench Book covers important aspects of fair treatment and disparity of outcomes for different groups in the criminal justice system. It provides guidance which sentencers are encouraged to take into account wherever applicable, to ensure that there is fairness for all involved in court proceedings.

Since the offence came into force in March 2015, the Sentencing Council has received a large number of requests for a sentencing guideline. It has been brought to our attention that there are concerns with sentencing in this area and a risk of inconsistent practices developing.

The offence is a strict liability offence, which is committed once the specified limit for any of 17 specified controlled drugs is exceeded. The 17 drugs include both illegal drugs and drugs that may be medically prescribed.

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. For these reasons it would be wrong to rely on the Driving with Excess Alcohol guideline when sentencing an offence under this legislation.

## Guidance only

At present there is insufficient reliable data available from the Department for Transport upon which the Sentencing Council can devise a full guideline. For that reason, and given the number of requests for guidance that have been received, the Sentencing Council has devised this guidance to assist sentencers.

It is important to note that **this guidance does not carry the same authority as a sentencing guideline**, and sentencers are not obliged to follow it. However, it is hoped that the majority of sentencers will find it useful in assisting them to deal with these cases.

The Sentencing Council will, in due course produce a guideline with the assistance of evidence and data gathered by the Department for Transport. Any new guideline will be made subject to public consultation before it is finalised.

## Background

The Crime and Courts Act 2013 inserted a new section 5A into the Road Traffic Act 1988 (RTA), which makes it an offence to drive, attempt to drive, or be in charge of a motor vehicle with a concentration of a specified controlled drug in the body above the specified limit. The offence came into force on 2 March 2015.

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# Driving or attempting to drive

Triable only summarily

Maximum: Unlimited fine and/or 6 months

- 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. Magistrates: 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

If there is a delay in sentencing after conviction, consider interim disqualification

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As a guide, where an offence of driving or attempting to drive has been committed and there are no factors that increase seriousness the Court should consider a starting point of a Band C fine, and a disqualification in the region of 12–22 months. See below for the list of factors that increase seriousness. Please note this is an exhaustive list and only factors that appear in the list should be considered.

Where there are factors that increase seriousness, the Court should consider increasing the sentence on the basis of the level of seriousness.

The community order threshold is likely to be crossed where there is evidence of one or more factors that increase seriousness. The Court should also consider imposing a disqualification in the region of 23–28 months.

The custody threshold is likely to be crossed where there is evidence of one or more factors that increase seriousness and one or more aggravating factors. The Court should also consider imposing a disqualification in the region of 29–36 months.

Having determined a starting point, the Court should consider additional factors that may make the offence more or less serious.

## **Factors that increase seriousness (this is an exhaustive list)**

- Evidence of another specified drug<sup>1</sup> or of alcohol in the body
- Evidence of an unacceptable standard of driving
- Driving (or in charge of) an LGV, HGV or PSV
- Driving (or in charge of) a vehicle driven for hire or reward

## **Aggravating and mitigating factors (these are non-exhaustive lists)**

### **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
- Location e.g. near school
- Carrying passengers
- High level of traffic or pedestrians in the vicinity
- Poor road or weather conditions

### **Mitigating factors**

- No previous convictions or no relevant/recent convictions
  - 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
  - Very short distance driven
  - Genuine emergency established
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### **In charge**

Triable only summarily

Maximum: Level 4 fine and/or 3 months

Must endorse and may disqualify. If no disqualification, impose 10 points

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As a guide, where an offence of being in charge has been committed but there are no factors that increase seriousness the Court should consider a starting point of a Band B fine, and endorsing the licence with 10 penalty points. The list of factors that increase seriousness appears below. Please note this is an exhaustive list and only factors that appear in the list should be considered.

Where there are factors that increase seriousness, the Court should consider increasing the sentence on the basis of the level of seriousness.

The community order threshold is likely to be crossed where there is evidence of one or more factors that increase seriousness and one or more aggravating factors (see below). The Court should also consider imposing a disqualification.

Where there is evidence of one or more factors that increase seriousness and a greater number of aggravating factors (see below) the Court may consider it appropriate to impose a short custodial sentence of up to 12 weeks. The Court should also consider imposing a disqualification.

Having determined a starting point, the Court should consider additional factors that may make the offence more or less serious. A non-exhaustive list of aggravating and mitigating factors is set out below.

## **Factors that increase seriousness (this is an exhaustive list)**

- Evidence of another specified drug<sup>1</sup> or of alcohol in the body
- Evidence of an unacceptable standard of driving
- Driving (or in charge of) an LGV, HGV or PSV
- Driving (or in charge of) a vehicle driven for hire or reward

## **Aggravating and mitigating factors (these are non-exhaustive lists)**

### **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
- Location e.g. near school
- Carrying passengers
- High level of traffic or pedestrians in the vicinity
- Poor road or weather conditions

### **Mitigating Factors**

- No previous convictions or no relevant/recent convictions
- 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
- Very short distance driven
- Genuine emergency established

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### **Notes**

1. For these purposes, cocaine and benzoylecgonine (BZE) shall be treated as one drug as they both occur in the body as a result of cocaine use rather than poly-drug use. Similarly, 6-Monoacetylmorphine and Morphine shall be treated as one drug as they both occur in the body as a result of heroin use. Finally, Diazepam and Temazepam shall be treated as one drug as they also both occur in the body as a result of Temazepam use.