

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

Road Traffic Act 1988, 5A

**Effective from:** tbc

Triable only summarily

Maximum: Unlimited fine and/or 6 months

Offence range: Band B fine – 26 weeks' custody

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.

### Step 1 – 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.

<b>Culpability demonstrated by one or more of the following</b>
<p><b>Factors indicating higher culpability</b></p> <ul style="list-style-type: none"> <li>• Driving an LGV, HGV or PSV etc</li> <li>• Driving for hire or reward</li> <li>• Evidence of another specified drug or of alcohol in the body</li> </ul> <div style="border: 1px solid black; padding: 5px; margin-top: 5px;"> <ul style="list-style-type: none"> <li>– 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-Monoacteyl-morphine and morphine; or Diazepam and Temazepam.</li> <li>– 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.</li> <li>– Regard should be had to totality (see step 5) if sentencing for more than one offence.</li> </ul> </div>
<p><b>Factors indicating lower culpability</b></p> <ul style="list-style-type: none"> <li>• All other cases</li> </ul>

**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

The court should not assume that a particular level of impairment necessarily follows from a particular level of a specified substance without evidence to support this.

- Evidence of an unacceptable standard of driving

**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** (rehabilitation courses **do not** apply to this offence)
- **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
<b>Category 1</b>	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)

<b>Category 2</b>	Medium level community order	Low level community order – High level community order	17 – 28 months	36 – 52 months
<b>Category 3</b>	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.

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 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

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

## Factors reducing seriousness or reflecting personal mitigation

1. No previous convictions or no relevant/recent convictions
2. Very short distance driven
3. Genuine emergency established
4. Genuine misunderstanding about safe dosage of prescribed medication
5. Remorse
6. Good character and/or exemplary conduct
7. Age and/or lack of maturity
8. Mental disorder or learning disability
9. 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.

#### **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 guideline for Reduction in Sentence for a Guilty Plea (where [first hearing is on or after 1 June 2017](#), or [first hearing before 1 June 2017](#)).

#### **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 [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: [deprivation](#), and [forfeiture or suspension of personal liquor licence](#).

- [Ancillary orders – Magistrates' Court](#)

#### **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 (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.

## In Charge with a specified drug above the specified limit

Road Traffic Act 1988, 5A

**Effective from:** tbc

Triable only summarily

Maximum: Level 4 fine and/or 3 months

Offence range: Band B fine – 26 weeks' custody

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.

### Step 1 – 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.

<b>Culpability demonstrated by one or more of the following</b>
<p><b>Factors indicating higher culpability</b></p> <ul style="list-style-type: none"> <li>• High likelihood of driving</li> <li>• In charge of LGV, HGV or PSV etc.</li> <li>• Offering to drive for hire or reward</li> <li>• Evidence of another specified drug or of alcohol in the body</li> </ul> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <ul style="list-style-type: none"> <li>- 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-Monoacteyl-morphine and morphine; or Diazepam and Temazepam.</li> <li>- 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.</li> <li>- Regard should be had to totality (see step 5) if sentencing for more than one offence.</li> </ul> </div>
<p><b>Factors indicating lower culpability</b></p> <ul style="list-style-type: none"> <li>• All other cases</li> </ul>

<b>Harm demonstrated by one or more of the following</b>
<b>Factors indicating greater harm</b> <ul style="list-style-type: none"> <li>• Obvious signs of impairment</li> </ul>
<ul style="list-style-type: none"> <li>- The court should not assume that a particular level of impairment necessarily follows from particular level of a specified drug without evidence to support this.</li> </ul>
<b>Factors indicating lesser harm</b> <ul style="list-style-type: none"> <li>• All other cases</li> </ul>

## 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 may disqualify. If no disqualification, impose 10 points**
- [Extend disqualification](#) if imposing immediate custody

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

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 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

1. Failure to comply with current court orders
2. Offence committed on licence or post sentence supervision

## **Factors reducing seriousness or reflecting personal mitigation**

1. No previous convictions or no relevant/recent convictions
2. Genuine misunderstanding about safe dosage of prescribed medication
3. Remorse
4. Good character and/or exemplary conduct
5. Age and/or lack of maturity
6. Mental disorder or learning disability
7. 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 6 – Compensation and ancillary orders**

In all cases, the court should consider whether to make [compensation](#) and/or other [ancillary orders](#) including: [deprivation](#), and [forfeiture or suspension of personal liquor licence](#).

- [Ancillary orders – Magistrates' Court](#)

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