

Excess alcohol (drive/attempt to drive)

Road Traffic Act 1988, s.5(1)(a)

Triable only summarily:

Maximum: Level 5 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 page 184 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 – **refer to page 184 and consult your legal adviser for further guidance**

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

Note: the final column below provides guidance regarding the length of disqualification that may be appropriate in cases to which the 3 year minimum applies. 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.

Offence seriousness (culpability and harm) A. Identify the appropriate starting point Starting points based on first time offender pleading not guilty						
Level of alcohol			Starting point	Range	Disqualification	Disqual. 2nd offence in 10 years – see note above
Breath (mg)	Blood (ml)	Urine (ml)				
36 – 59	81 – 137	108 – 183	Band C fine	Band C fine	12 – 16 months	36 – 40 months
60 – 89	138 – 206	184 – 274	Band C fine	Band C fine	17 – 22 months	36 – 46 months
90 – 119	207 – 275	275 – 366	Medium level community order	Low level community order to high level community order	23 – 28 months	36 – 52 months
120 – 150 and above	276 – 345 and above	367 – 459 and above	12 weeks custody	High level community order to 26 weeks custody	29 – 36 months	36 – 60 months

Offence seriousness (culpability and harm) B. Consider the effect of aggravating and mitigating factors (other than those within examples above) Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but these lists are not exhaustive	
Factors indicating higher culpability <ol style="list-style-type: none"> 1. LGV, HGV, PSV etc. 2. Poor road or weather conditions 3. Carrying passengers 4. Driving for hire or reward 5. Evidence of unacceptable standard of driving Factors indicating greater degree of harm <ol style="list-style-type: none"> 1. Involved in accident 2. Location e.g. near school 3. High level of traffic or pedestrians in the vicinity 	Factors indicating lower culpability <ol style="list-style-type: none"> 1. Genuine emergency established * 2. Spiked drinks * 3. Very short distance driven * * even where not amounting to special reasons

**Form a preliminary view of the appropriate sentence,
then consider offender mitigation**

Common factors are identified in the pullout card

Consider a reduction for guilty plea

**Consider offering drink/drive rehabilitation course
Consider ancillary orders, including forfeiture or
suspension of personal liquor licence**

Refer to pages 168-174 for guidance on available ancillary orders

**Decide sentence
Give reasons**