

Success Starts Here Free Information Guide

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Criminal Law & Fraud



A person who drives, or is in charge of a vehicle, following the consumption of alcohol risks being disqualified from driving. This guide gives an introduction to the main offences involved.

Driving a motor vehicle whilst over the prescribed limit for alcohol

The most common drink driving offence is that of driving over the prescribed limit for alcohol. It is an offence to **drive**, or **attempt to drive**, or be **in charge** of, a motor vehicle on a road or other public place whilst being over the prescribed limit of alcohol in blood, breath or urine.

There is no simple definition of being **in charge** of a motor vehicle. The court will look at all the particular circumstances of the case, but it will be necessary to show a close connection between the defendant and the control of the motor vehicle. It is a defence to show that there was no likelihood of driving whilst under the influence.

The prescribed limits are as follows:

- 35µg (microgrammes) per 100 ml of breath
- 80mg (milligrammes) per 100 ml of blood
- 107mg (milligrammes) per 100 ml of urine

The preliminary tests

A police constable in uniform may require a breath test from a person if he has reasonable suspicion that:

- that person is driving, attempting to drive, or is in charge of a motor vehicle on a road or other public place and they have alcohol in their body; or
- has been driving, attempting to drive, or has been in charge of a motor vehicle on a road or other public place while having alcohol in their body; or
- has been driving, attempting to drive or has been in charge of a motor vehicle on a road or other public place and has committed a traffic offence while the vehicle was in motion; or
- if an accident occurs involving a vehicle, the constable reasonably believes that the person was driving, attempting to drive or was in charge of the vehicle at the time of the accident.

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The initial roadside test is a “preliminary” test. It is an offence to fail to cooperate with a preliminary test without having a reasonable excuse. You may be arrested and taken to a police station if you refuse to cooperate. There is no right to speak to a solicitor prior to taking the preliminary test.

If you fail that test it is likely that you will be arrested and then be required to submit to a further “evidential” test at the police station.

The evidential tests – providing specimens for analysis

The law surrounding providing specimens for analysis can be extremely complicated and you should always seek advice specific to your situation. In general terms, in most cases you will be required to provide two breath specimens into an analysis machine at the police station. The lower reading of the two is used and the other is disregarded.

If the equipment registers an alcohol level of no more than 50µg per 100 ml of breath then you must be offered the option of providing a further specimen. This will be of either blood or urine, and it will be the police who will decide which. The further specimen will then be sent off for laboratory testing. Again, you are not entitled to legal advice before deciding whether to exercise this option.

In certain situations a police officer may require the provision of a blood or urine specimen either as an alternative to or in addition to a breath specimen.

Once a further specimen has been provided the breath specimens will not normally be admissible as evidence and the police will have to rely on the blood or urine sample as evidence. The analysis of blood or urine specimens is generally more precise than that of breath specimens.

Failure to provide a specimen

It is an offence to fail to provide a specimen when lawfully required to do so, unless you have a reasonable excuse not to. It will only be in the rarest of cases that anyone will have a reasonable excuse not to provide a specimen. However, there is no legal right to see a solicitor prior to providing a specimen. A suspect who refuses to provide a specimen until he has spoken to a solicitor would risk committing the offence of failing to provide a specimen.

Consequences of failing the specimen tests, or refusing to provide a specimen

The sentence for driving whilst over the prescribed limit for alcohol is up to 6 months in prison and a fine of up to £5,000 as well as an obligatory disqualification from driving for a minimum of 12 months. Some courts offer a 3 month reduction in this ban if you agree to go on a drink driving rehabilitation course.

A person convicted of being **in charge** of a motor vehicle, as opposed to driving, is liable to up to 3 months in prison and a fine of up to £2,500 as well as a discretionary disqualification from driving.

The maximum penalties for failing to provide a specimen for analysis are the same as for someone convicted of driving, or being in charge of, a motor vehicle whilst being over the prescribed limit. A failure to cooperate will, in effect, lead to broadly the same result as the specimen failing the alcohol analysis.

However, drivers would normally be best advised to cooperate with the police. In some situations, for example in the “in charge of a vehicle” cases, a failure to cooperate with the police may count against the defendant where the court has discretion as to whether or not to disqualify from driving.

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However, the court may consider whether there are any **special reasons** why the defendant should not be disqualified, but these must be reasons specific to the offence and not the defendant. If special reasons apply then there will be an obligatory endorsement of 3-11 penalty points.

Generally speaking, the approach of the courts is that only in absolutely exceptional circumstances can there be a special reason that justifies driving having consumed excess alcohol.

I require further advice. What should I do now?

If you require legal advice in relation to any motoring offences please contact our legal helpline on 0800 014 7445.

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