

# The Law on Drink Driving

## Drink driving

### What is the legal limit?

- 80mg of alcohol in 100mg of blood
- 107mg of alcohol in 100mg of urine
- 35mg of alcohol in 100ml of breath

### When can the police ask for a breath test?

An officer in uniform can ask you to give a breath test if s/he:

- Has reasonable cause to suspect that you have or are committing a road traffic offence.
- Has reasonable grounds to suspect that whilst either driving, attempting to drive or whilst you are in charge of the vehicle you have or had consumed alcohol.

The roadside breath test will be taken by blowing into a bag or a machine and is a preliminary test and if positive does not measure the amount of alcohol in your system, simply that you have failed the roadside test.

### What happens if I refuse to give a sample?

If you fail to do so without reasonable excuse you will be committing a separate offence of failing to provide a specimen. It is not a defence to refuse to give a sample just because you think you are under the legal limit!

## **What happens if I pass the roadside breath test?**

Usually nothing unless the police have reasonable grounds to believe that you are driving whilst unfit through drugs or that you have committed another arrestable offence; for example, dangerous driving.

## **What happens if I fail the roadside breath test?**

You will be arrested on suspicion of drink driving and taken to the police station or custody centre where you will be booked into custody and required to give a sample of breath, blood or urine.

## **Giving the sample at the police station**

Usually the police will ask for a breath sample but may in some circumstances ask for blood or urine.

If the police ask for a breath sample you will be asked to blow into a machine approved by the secretary of state which analyses the level of alcohol in your breath and gives a print off of the results of two readings taken and the police will use the lower reading to determine the level of alcohol. If your reading is 50 or less you are entitled to ask for a sample of blood or urine to be taken for analysis. If you are asked to give a blood sample, then this will be taken by a doctor. If you refuse to give blood without a reasonable excuse the police will simply rely on your breath reading instead. It is in your interests to co-operate. If you are asked to give a urine sample, you will be required to give two samples within an hour. Again if you fail to co-operate they will rely on your breath sample.

If you have a medical reason that prevents you from giving whichever sample asked of you, you must tell the police straight away and make sure that they have recorded what you have said in writing.

## **Can I delay giving a sample until I have spoken to a solicitor?**

No and if you insist on doing so the likelihood is you will instead be charged with failing to supply a specimen.

## **What happens if I am over the legal limit?**

You will be charged with an offence of drink driving.

## What defences are there to drink driving offences?

- You were not driving.
- The excess alcohol in your system was consumed after driving. This is for you to prove on a balance of probabilities; ie, it is more likely than not that it was your post driving alcohol that took you over the limit and that you were not over the limit when you were driving.
- If you have been charged with being in charge of a vehicle whilst over the prescribed limit: that you had no prospect of driving whilst you were still over the limit. This is for you to prove on a balance of probabilities.
- In some cases, that the police did not follow the procedures correctly.
- That the breath test machine wasn't working.
- That you were not driving on a public road.

## What will happen next?

Once you have been charged with the offence you will in most cases be bailed to attend court. If you have been bailed to attend court and fail to do so without a reasonable excuse you will be committing a separate offence under the Bail Act, the maximum sentence for which in the magistrates' court is a three month custodial sentence.

At court either you or your solicitor (if you have one) will be given a copy of the evidence. If you plead not guilty your case will be adjourned for trial and in most cases you will be given the trial date at court on the day you plead not guilty.

If you plead guilty then depending on your circumstances, your previous convictions and how much over the limit you are, you will either be sentenced on the day you plead guilty or your case will be adjourned for a pre sentence report. This will be prepared by a probation officer following an interview with you and they will then make recommendations about how you should be sentenced. If your case is adjourned for a pre sentence report you will be bailed to re-attend court for your sentencing hearing.

## **Where will my case be dealt with?**

Drink drive offences can only be dealt with by the magistrates' court. This means your case will be heard in the magistrates' court that is local to where you committed the alleged offence. Your case will not be dealt with in the crown court and you will not be entitled to a trial by jury.

## **Will I receive a driving ban?**

Yes if you plead guilty/are convicted of either driving whilst over the legal limit or attempting to drive whilst over the legal limit you will be disqualified for a minimum period of 12 months. This is mandatory unless the magistrate's find special reasons in your case. (For an explanation of special reasons please refer to our special reasons fact sheet).

If you plead guilty to/are convicted of being in charge of a motor vehicle whilst over the legal limit the magistrate's will either impose 10 penalty points or disqualify you from driving.

## **What length of disqualification will I receive?**

Unless special reasons exist the magistrates must disqualify you for a minimum period of at least 12 months.

If you have two or more disqualifications for at least 56 days or more in the 3 years to this offence you will be disqualified for at least 2 years.

If you have been convicted of a relevant drink drive offence in the 10 years prior to this offence you will be disqualified for at least 3 years.

If you have no relevant previous convictions or disqualifications the length of your ban will depend on your reading based on the magistrate's sentencing guidelines (see our link to the sentence council guidelines where you can download the actual guidelines for yourself). The guidelines are just that, a guideline but in most cases the magistrates will follow them.

## Guideline disqualification and sentence.

These are based on a first time offender following conviction at trial.

If you plead guilty at the first opportunity you will be entitled to a discount in your sentence of one third.

Level of alcohol. Breath (mg). Blood (ml) Urine (ml)	Starting point	Range	Disqualification	Disqualification n. 2 <sup>nd</sup> offence in 10 years
36-59 mg breath. 81-137 ml blood. 108 – 183 ml urine.	Band C fine	Band C fine	12 – 16 months	36 – 40 months
60 – 89 mg breath. 138 – 206 ml blood. 184 – 274 ml urine.	Band C fine	Band C fine	17 – 22 months	36 – 46 months
90 – 119 mg breath. 207 – 275 ml blood. 275 – 388 ml urine.	Medium level community order	Low level community order to high level community order	23 – 36 months	36 – 52 months
120 – 150 mg breath. 276 – 345 ml blood. 367 – 459 urine and above.	12 weeks custody	High level community order to 26 weeks custody	29 -36 months	36 – 60 months

## Is there any way I can reduce my ban?

Yes. The court can in some cases offer you the opportunity to take part in an approved drink drive rehabilitation course which providing you complete it by the date specified to you by the court will reduce your ban. The reduction will be for not less than three months and not more than one quarter of the original ban; i.e. if you have received a 12 month ban and complete the course, your ban will be reduced to 9 months. If you are offered to take part on this course, it is your interests to agree.

## **Should I consult a solicitor?**

Drink driving offences are serious and you should always seek legal advice before entering your plea.

## **Appealing against conviction**

If you have been convicted by the magistrates of a drink driving offence and want to appeal against that decision you can either appeal to the crown court where you will have a fresh trial in front of a crown court judge and two magistrates or you can appeal the decision to the high court by way of case stated or judicial review.

If you wish to appeal against either conviction or sentence you must file your notice of appeal on both the court and prosecution within 21 days of the conclusion of your case.