

# Drink Driving Offences

## What is an offence of drink driving?

Under the Road Traffic Act 1988 it is an offence to drive, attempt to drive or to be in charge of a motor vehicle on the public highway or a public place, whilst unfit through drink or to have a level of alcohol in your body which exceeds the permitted limit.

'Being in charge' means even if you are not driving a vehicle, but you are in the vehicle on the public highway/public place, you can be deemed as 'in charge' of the vehicle, even if you do not have the keys for the vehicle. It is a defence to prove that you had no intention to drive whilst over the limit.

## What is the recommended legal limit?

The current legal drink driving limit is:

35 microgrammes of alcohol in 100 millilitres of breath;  
80 milligrammes of alcohol in 100 millilitres of blood;  
107 milligrammes of alcohol in 100 millilitres of urine.



## How is drink-driving tested?

You will be asked to provide a sample of breath for a breath test if a Police officer suspects that you have exceeded the limit due to the standard of your driving or if you have been involved in an accident. If you fail a roadside breath test you will be arrested and taken to the Police station where you will be asked to provide two further specimens of breath for analysis using approved equipment. If you cannot provide a breath sample at the Police station or if the Police equipment is faulty you may be asked to provide a blood or urine sample for analysis instead. You do not have the right to choose an alternative testing method.

If you fail to provide a specimen of breath, blood or urine as requested, without a reasonable excuse, this will usually amount to a criminal offence. Being too drunk to complete the test is not a reasonable excuse however a medical condition maybe a reasonable excuse, depending on the condition. This would need to be supported by medical evidence.

## What if the result is just over the legal limit?

If the lowest reading is 39 microgrammes in breath or below, you may be released with a warning. If the reading is between 40 and 50 microgrammes you may be given the option of either a blood or urine test. A urine sample is taken on the basis of 2 samples within 1 hour. A blood sample must be taken by a Police surgeon and you have the option of requesting 2 blood samples be taken. One sample is offered to you should you wish to instruct an expert to independently test the sample.

If you are still over the limit you will be cautioned, charged, and bailed to attend Court at a later date.

The Police must obtain the evidence as quickly as possible in order to establish the amount of alcohol before it is broken down by your metabolism. Therefore when a specimen of breath, blood or urine is requested by a policeman, it is an offence to refuse. You may be able to raise a valid defence against being convicted if you are able to show that there was a valid reason for your refusal. In these circumstances it is always advisable to seek legal assistance.

**Continued overleaf >**

Contact our Transport team:

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'Keepmeontheroad' is the collective name for the Road Transport Law & Motorist Defence team at Rotheras Solicitors.

The team at Rotheras solicitors like to do things differently. Our Nottingham based legal experts offer the kind of legal expertise that really counts, and our reputation pays testament to the fact we deliver the right results for our clients.

## If I am convicted, what are the likely penalties?

The penalties for the most common offences are:

- Driving/attempting to drive with excess alcohol - Starting point is a 12 month mandatory disqualification for a first offence or 3 years for second offence within 10 years. Fine of up to £5,000.00 and/or 26 weeks imprisonment
- Being in charge of a vehicle with excess alcohol - Starting point is 10 penalty points or a discretionary disqualification. Fine of up to £2,500.00 and/or 6 weeks imprisonment
- Failing to provide a roadside breath test - Starting point is a 12 month discretionary disqualification. Fine/ Community order/ up to 26 weeks imprisonment

If you are banned on the day of your court date, that ban will come into effect immediately therefore it is advisable not to drive to court on the day of your hearing.

## Can I get the sentence reduced?

The Court does have the opportunity to consider sending a convicted motorist on a drink drive rehabilitation course. Completing the course can entitle the driver of a reduction in their disqualification of up to 25%. If you agree to attend the rehabilitation course you will have to pay for it. You will then be contacted by the course provider and advised where you need to attend and for how long. The course is designed to demonstrate the effects of drink-driving and usually lasts between 16 and 30 hours and is made up of a number of different sessions. A range of issues are covered which will include information about alcohol and its effect on the body, the effect of alcohol consumption on driving ability, as well as an analysis of drink-driving offences and alternatives to drinking and driving.

When you have completed the course you will be given a Certificate of Completion to present to the court. The court will then notify the DVLA of your reduced disqualification period. The course must be completed at least two months before the end disqualification period to allow the DVLA sufficient time to take account of the reduction. You cannot demand to be sent on the course, it is at the discretion of the Court.

## How long does a drink drive stay on my licence?

An endorsement for drink driving shows on your licence as DR10 (which is the DVLA code for drink driving) if you are convicted of a drink drive offence. This endorsement will remain on your licence for 11 years following conviction. If you have two convictions for drink driving within a 10 year period your ban will start at a minimum of 3 year disqualification.

## Can I get my licence back before the ban ends?

If you have received a lengthy driving disqualification it may be possible to apply to the Court for an early removal of the disqualification.

If the disqualification was for less than 4 years, you may be able to apply to get your licence back after 2 years. If the disqualification was for more than 4 years but less than 10 years then you can apply after you have served half of the disqualification period. And if the disqualification is for 10 years or more, you can apply after serving 5 years of the disqualification.

In order to get your licence back you will need to show the court that you have a good reason and there is no likelihood that any further offences would be committed.

## When should I seek legal advice?

It is always advisable to seek assistance from a specialist motoring solicitor as soon as you receive a charge sheet or summons for a drink-driving matter. When facing any charge where you could be disqualified from driving it is best to seek advice as soon as possible in order put a defence forward or to keep any disqualification to the shortest possible period. We offer professional expert advice in relation to drink-driving, in order to find out how to proceed please contact us at the earliest opportunity.

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